



भारत का राजपत्र

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सं. 2] नई दिल्ली, जनवरी 5, 2014—जनवरी 11, 2014, शनिवार/पौष 15—पौष 21, 1935
No. 2] NEW DELHI, JANUARY 5, 2014—JANUARY 11, 2014, SATURDAY/PAUSA 15—PAUSA 21, 1935

भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(राजस्व विभाग)

(केन्द्रीय प्रत्यक्ष कर बोर्ड)

नई दिल्ली, 26 दिसम्बर, 2013

का०आ० 89.—सर्वसाधारण की जानकारी के लिए एतद्वारा यह अधिसूचित किया जाता है कि केन्द्र सरकार द्वारा आयकर नियमावली, 1962 (उक्त नियमावली) के नियम 5ग और 5घ के साथ पठित आयकर अधिनियम, 1961 (उक्त अधिनियम) की धारा 35 की उप-धारा (1) के खंड (iii) के प्रयोजनार्थ सलीम अली सेंटर फॉर ऑर्निथोलॉजी एंड नेचुरल हिस्ट्री, कोयम्बतूर (पैन-एआईटीएस 2380 एम) को कर-निर्धारण वर्ष 2013-2014 से निम्नलिखित शर्तों के अधीन 'वैज्ञानिक अनुसंधान संस्था' कार्यकलापों की श्रेणी में अनुमोदित किया गया है, नामतः—

- (i) अनुमोदित 'वैज्ञानिक अनुसंधान संस्था' का मुख्य उद्देश्य वैज्ञानिक अनुसंधान करना होगा;

- (ii) अनुमोदित संगठन वैज्ञानिक अनुसंधान स्वयं करेगा;

- (iii) अनुमोदित संगठन वैज्ञानिक अनुसंधान के लिए इसको प्राप्त राशि के संबंध में अलग खाता बही रखेगा, जिसमें अनुसंधान करने के लिए प्रयुक्त राशि दर्शाई गई हो, उक्त अधिनियम की धारा 288 की उप-धारा (2) के स्पष्टीकरण में यथा परिभाषित किसी लेखाकार से अपने खाता-बही की लेखा-परीक्षा कराएगा और उक्त अधिनियम की धारा 139 की उप-धारा (1) के अंतर्गत आय की विवरणी प्रस्तुत करने की नियत तिथि तक ऐसे लेखाकार द्वारा विधिवत सत्यापित एवं हस्ताक्षरित लेखा परीक्षा रिपोर्ट इस मामले में क्षेत्राधिकार रखने वाले आयकर आयुक्त अथवा आयकर निदेशक को प्रस्तुत करेगा;

- (iv) अनुमोदित संगठन प्राप्त दान और सामाजिक विज्ञान में अनुसंधान के लिए प्रयुक्त राशि का अलग विवरण रखेगा और उपर्युक्त लेखा-परीक्षा रिपोर्ट के साथ लेखा-परीक्षक द्वारा विधिवत सत्यापित ऐसे विवरण की प्रतिलिपि प्रस्तुत करेगा।

2. केंद्र सरकार यह अनुमोदन वापस ले लेगी यदि अनुमोदित संगठन:—

- (क) पैराग्राफ 1 के उप-पैराग्राफ (iii) में उल्लिखित अलग लेखा-बही रखने में असफल रहता है; अथवा

- (ख) पैराग्राफ 1 के उप-पैराग्राफ (iii) में उल्लिखित अपनी लेखा-परीक्षा रिपोर्ट प्रस्तुत करने में असफल रहता है; अथवा
- (ग) पैराग्राफ 1 के उप-पैराग्राफ (iv) में उल्लिखित सामाजिक विज्ञान अथवा सांख्यिकीय अनुसंधान में अनुसंधान के लिए प्राप्त एवं प्रयुक्त दान का अपना विवरण प्रस्तुत करने में असफल रहता है; अथवा
- (घ) अपना अनुसंधान कार्य करना बंद करता है अथवा इसके अनुसंधान कार्य को सही नहीं पाया जाता है; अथवा
- (ङ) उक्त नियमावली के नियम 5ग और 5घ के साथ पठित उक्त अधिनियम की धारा 35 की उप-धारा (1) के खंड (iii) के प्रावधानों के अनुसार नहीं चलता है और उनका पालन नहीं करता है।

[अधिसूचना सं० 97/2013/फा० सं० 203/44/2012-आ०क०नि०-II]
ऋचा रस्तोगी, अवर सचिव (आ०क०नि०-II)

MINISTRY OF FINANCE

(Department of Revenue)

(CENTRAL BOARD OF DIRECT TAXES)

New Delhi, the 26th December, 2013

S.O. 89.—It is hereby notified for general information that the organization Salim Ali Centre for Ornithology and Natural History, Coimbatore (PAN AAETS2380M) has been approved by the Central Government for the purpose of clause (iii) of sub-section (1) of section 35 of the Income-tax Act, 1961 (said Act), read with Rules 5C and 5D of the Income-tax Rules, 1962 (said Rules), from Assessment year 2013-2014 onwards in the category of 'Scientific Research Association' activities subject to the following conditions, namely:—

- (i) the sole objective of the approved 'Scientific Research Association' shall be undertake scientific research;
- (ii) the approved organization shall carry out scientific research by itself;
- (iii) The approved organization shall maintain separate books of accounts in respect of the sums received by it for scientific research, reflect therein the amounts used for carrying out research, get such books audited by an accountant as defined in the explanation to sub-section (2) of section 288 of the said Act and furnish the report of such audit duly signed and verified by such accountant to the Commissioner of Income-tax or the Director of Income-tax having jurisdiction over the case, by the due date of furnishing the return of income under sub-section (1) of section 139 of the said Act;

- (iv) The approved organization shall maintain a separate statement of donations received and amounts applied for research in social science and a copy of such statement duly certified by the auditor shall accompany the report of audit referred to above.

2. The Central Government shall withdraw the approval if the approved organization:—

- (a) fails to maintain separate books of accounts referred to in sub-paragraph (iii) of paragraph 1; or
- (b) fails to furnish its audit report referred to in sub-paragraph (iii) of paragraph 1; or
- (c) fails to furnish its statement of the donations received and sums applied for research in social science or statistical research referred to in sub-paragraph (iv) of paragraph 1; or
- (d) ceases to carry on its research activities or its research activities are not found to be genuine; or
- (e) ceases to conform to and comply with the provisions of clause (iii) of sub-section (1) of section 35 of the said Act read with rules 5C and 5D of the said rules.

[Notification No. 97/2013/F.No.203/44/2012/ITA-II]

RICHARASTOGI, Under Secy. (ITA-II)

विदेश मंत्रालय

(सीपीवी प्रभाग)

नई दिल्ली, 6 जनवरी, 2014

का०आ० 90.—राजनयिक और कांसलीय ऑफिसर (शपथ और फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में केंद्र सरकार एतद्वारा श्री अशोक कुमार, सहायक को 6 जनवरी, 2014 से भारत के कोंसुलावास, हेरात, सहायक कोंसुलर अधिकारी के कर्तव्यों का पालन करने के लिए प्राधिकृत करती है।

[सं० टी० 4330/01/2014]

आर०के० परईंदिया, उप सचिव (कोंसुलर)

MINISTRY OF EXTERNAL AFFAIRS

(CPV DIVISION)

New Delhi, the 6th January, 2014

S.O. 90.—In pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby authorize Shri Ashok Kumar, Assistant, in Consulate General of India, Herat to perform the duties of Assistant Consular Officer with effect from 6th January, 2014.

[No. T. 4330/01/2014]

R. K. PERINDIA, Dy. Secy. (Consular)

विद्युत मंत्रालय

नई दिल्ली, 24 दिसम्बर, 2013

का०आ० 91.—सार्वजनिक परिसर (अप्राधिकृत अधिभोगियों की बेदखली) अधिनियम, 1971 (1971 का 40), की धारा-3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केंद्रीय सरकार एतद्वारा विद्युत मंत्रालय के दिनांक 8 जुलाई, 1993 के एस०ओ० संख्या 1590, में भारत सरकार की अधिसूचना में निम्नलिखित अतिरिक्त संशोधन करती है, अर्थात्:—

2. उपर्युक्त अधिसूचना में, कालम (1) और (2) के अंतर्गत प्रविष्टियों के लिए क्रम संख्या 3 के सामने तालिका में निम्नलिखित प्रविष्टियों को प्रतिस्थापित किया जाएगा, अर्थात्:—

- | (1) | (2) |
|---|-----|
| 3. “श्री सुबीर कुमार मुखर्जी, नेशनल थर्मल पावर कारपोरेशन लिमिटेड, वरिष्ठ प्रबंधक (मानव संसाधन), (एनटीपीसी लिमिटेड) और इसके एनटीपीसी लिमिटेड, तालचेर तालचेर थर्मल पावर स्टेशन, ताप विद्युत केंद्र पोस्ट ऑफिस-दीपशिखा, जिला-अंगुल, ओडिशा ओडिशा-759147 के प्रशासनिक नियंत्रणाधीन लिए गए अथवा पट्टे पर लिए गए संबंधित सभी परिसर।” | |

[फा० सं० 8/6/1992-टीएच I पीटी-XV]
जी० साई प्रसाद, संयुक्त सचिव

टिप्पणी: मुख्य अधिसूचना भारत सरकार के दिनांक 8 जुलाई, 1993 के एस०ओ० 1590, के माध्यम से भारत के राजपत्र में प्रकाशित की गई थी और दिनांक 1 जुलाई, 2011 के एस०ओ० सं० 1814 के माध्यम से पिछला संशोधन किया गया था।

MINISTRY OF POWER

New Delhi, the 24th December, 2013

S.O. 91.—In exercise of the powers conferred by section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, (40 of 1971) the Central Government hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Power number S.O. 1590, dated 8th July, 1993, namely:—

2. In the said notification, in the table, against serial number 3, for the entries under column (1) and (2), the following entries shall be substituted, namely:—

- | (1) | (2) |
|---|--|
| 3. "Shri Subir Kumar Mukherjee, Senior Manager (Human Resources), NTPC Limited, Talcher Thermal Power Station. Odisha | All premises belonging to or taken on lease by National Thermal Power Corporation Limited (NTPC Limited) and under the Administrative Control of its Talcher Thermal Power Station, Post Office: Deepshikha, District: Angul, Odisha. 759147." |

[F.No. 8/6/1992-TH-I Pt. XV]

G. SAI PRASAD, Jt. Secy.

Note : The principal notification was published in the Gazette of India vide number S.O. 1590, dated the 8th July, 1993 and last amended vide number S.O. 1814, dated the 1st July, 2011.

वस्त्र मंत्रालय

नई दिल्ली, 23 दिसम्बर, 2013

का०आ० 92.—केन्द्रीय सरकार, संघ के शासकीय प्रयोजनों के लिए राजभाषा नियम, 1976 के नियम 10 के उपनियम 4 के अनुसरण में, वस्त्र मंत्रालय के अंतर्गत आने वाले निम्नलिखित कार्यालय को जिसमें 80% से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है:—

1. विपणन एवं सेवा विस्तार केंद्र, विकास आयुक्त (हस्तशिल्प) कार्यालय, 106/III, ए प्रथम तल, टोंक फाटक पुलिया, मानसिंहपुरा, टोंक रोड, जयपुर-302018 (राजस्थान)।
2. विपणन एवं सेवा विस्तार केंद्र, विकास आयुक्त (हस्तशिल्प) कार्यालय, 65 विनय नगर, सेक्टर-4, ग्वालियर-474012 (मध्य प्रदेश)।
3. कालीन बुनाई प्रशिक्षण एवं सेवा केंद्र, विकास आयुक्त (हस्तशिल्प) कार्यालय, ई०एस०आई० कालोनी, अम्बेडकर पथ, बेली रोड, पटना-800014 (बिहार)।
4. विपणन एवं सेवा विस्तार केंद्र, विकास आयुक्त (हस्तशिल्प) कार्यालय, जलधारी कालोनी, मधुबनी-847221 (बिहार)।
5. विपणन एवं सेवा विस्तार केंद्र, विकास आयुक्त (हस्तशिल्प) कार्यालय, स्टेट बैंक ऑफ इंडिया जसीडीह बाजार शाखा के ऊपर, जसीडीह, देवघर-814142 (झारखण्ड)।
6. विपणन एवं सेवा विस्तार केंद्र, विकास आयुक्त (हस्तशिल्प) कार्यालय, प्लाट नं० 39, वुध नगर, भुवनेश्वर-751006 (उड़ीसा)।
7. विपणन एवं सेवा विस्तार केंद्र, विकास आयुक्त (हस्तशिल्प) कार्यालय, जगन्नाथ मंदिर कालोनी, प्रथम लेन, बुद्धराजा, सम्भलपुर-768004 (उड़ीसा)।
8. विपणन एवं सेवा विस्तार केंद्र, विकास आयुक्त (हस्तशिल्प) कार्यालय, राजा राम मोहन राय रोड, हाकिमपाड़ा, सिलीगुड़ी-734401 (प० बंगाल)।

[फा० सं० ई-11016/1/2011-हिन्दी]

सुजीत गुलाटी, संयुक्त सचिव

MINISTRY OF TEXTILES

New Delhi, 23rd December, 2013

S.O. 92.—In pursuance of sub-rule (4) of Rule 10 of the Official Languages (use for the official purpose of the Union) Rules, 1976, the Central Government, hereby notifies the following offices of the Ministry of Textiles, more than 80% staff whereof have acquired working knowledge of Hindi:

1. Marketing & Service Extension Centre, Office of DC (Handicrafts), 106/II, 1st floor, Tonk Road Over bridge, Mansinghpura, Tonk Road, Jaipur-302018 (Rajasthan).
2. Marketing & Service Extension Centre, Office of DC (Handicrafts), 65, Vinay Nagar, Sector-4, Gwalior-474012 (M.P.).
3. Carpet Weaving Training-cum-Service Centre, E.S.I. Colony, Ambedkar Path, Bailey Road, Patna-800014 (Bihar).

4. Marketing & Service Extension Centre, Office of DC (Handicrafts), Jaladhari Colony, Madhubani-847211 (Bihar).
5. Marketing & Service Extension Centre, Office of DC (Handicrafts), Above the State Bank of India Jasidih Bazar Branch, Jasidih, Deoghar-814142 (Jharkhand).
6. Marketing & Service Extension Centre, Office of DC (Handicrafts), Plot No. 39, Budhanagar, Bhubneshwar-751006 (Orissa).
7. Marketing & Service Extension Centre, Office of DC (Handicrafts), Jagannath Mandir Colony, 1st Lane, Budharaja, Sambalpur-768004 (Orissa).
8. Marketing & Service Extension Centre, Office of DC (Handicrafts), Raja Ram Mohan Roy Road, Hakimpura Siliguri-734401 (W. Bengal).

[F. No. E-11016/1/2011-Hindi]
SUJIT GULATI, Jt. Secy.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

(भारतीय मानक ब्यूरो)

नई दिल्ली, 2 दिसम्बर, 2013

का०आ० 93.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम 6 के उप-विनियम (3) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा नीचे अनुसूची में दिए गए उत्पादों की मुहरांकन शुल्क अधिसूचित करता है:

अनुसूची

भारतीय मानक संख्या	भाग	अनु वर्ष	उत्पाद	इकाई	न्यूनतम मुहरांकन शुल्क		इकाई दर स्लैब में स्लैब 1 (रु.)	शेष	प्रचालन तिथि
					बड़े पैमाने पर	छोटे पैमाने पर			
6046	—	—	1982 कृषि उपयोग के लिए जिप्सम	एक मी० टन	रु० 35000	रु० 30000	रु. 2.00	—	02.12.2013

[सं० सीएमडी-2/जी-18]

पी० के० गम्भीर, वैज्ञानिक 'जी' एवं प्रधान (प्रमाणन)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

(BUREAU OF INDIAN STANDARDS)

New Delhi, the 2nd December, 2013

S.O. 93.—In pursuance of sub-regulation (3) of regulation 6 of the Bureau of Indian Standards (Certification) Regulations 1988, the Bureau of Indian Standards, hereby notifies the Marking fee for the products given in the schedule:

SCHEDULE

IS No.	Part	Sec.	Year	Product	Units	Minimum Marking Fee		Unit Rate	Units in	Remai- ning	Effective Date
						Large Scale	Small Scale		Slab 1		
6046	-	-	1982	Gypsum for Agriculture Use	1 M.T.	Rs. 35000	Rs. 30000	Rs. 2.00	All	-	02.12.2013

[No. CMD-II/G-18]

P. K. GAMBHIR, Scientist 'G' & Chief (Certification)

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 19 दिसम्बर, 2013

कांआ 94.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार गुण कैरिज फैक्ट्री, जबलपुर के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 129/88) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18/12/2013 को प्राप्त हुआ था।

[सं एल-14012/6/84-आईआर (डीयू)]

पी० के० वेणुगोपाल, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 19th December, 2013

S.O. 94.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 129/88) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of Gun Carriage Factory, Jabalpur and their workmen, received by the Central Government on 18/12/2013.

[No. L-14012/6/84-IR(DU)]

P. K. VENUGOPAL, Section Officer.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

No. CGIT/LC/R/129/88

Presiding Officer: SHRI R.B. PATLE

The President,
GCF Mazdoor Sangh,
C/o Swapana Tailor, 743/3,
East Ghamapur,
Jabalpur.

...Workman/Union

Versus

General Manager,
Gun Carriage Factory,
Jabalpur.

...Management

AWARD

(Passed on this 9th day of October 2013)

1. As per letter dated Nil by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-14012/6/84-D. II(B). The dispute under reference relates to:

"Whether the action of the management of Gun Carriage Factory, Jabalpur (MP) in not giving equal scale of pay *i.e.* 380-560 to "A" Grade workmen listed below compared to their counterparts *i.e.* Jig Borers and Tool and Gauge Fitters "A" and also equalizing them with "B" Grade Jig Borers and Tool and Gauge Fitters is justified? If not, to what relief the workmen affected are entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party Union filed statement of claim at Page 4/1 to 4/4. The case of Ist Party Union is that all the workmen connected with the reference are matriculate. They appeared before different Ordnance Factory Board for written test and interview and medical examination for getting themselves enrolled as Apprentices Trainees. After passing written test and interview, they were enrolled as trainees to undergo National Trade Apprentice Course which was conducted by the labour Ministry. The course was for a duration of 3 to 4 years known as National Trade apprentice course.

3. On completion of said course, the individual workmen were again put to written test, psychological test, medical examination and interview and after passing such examinations, those workmen were enrolled as skilled craftsmen and further course was conducted by the Director General of Ordnance Factories. This training was for a period of 2½ years under the Director General of Ordnance Factories which is under the Ministry of Defence Production. This is a special training course in various trades.

4. After completing above training and course, the applicants were appointed as Skilled Craftsmen "A" grade in the pay scale Rs. 320-400. They were appointed around March 1980. On 16.10.81, pay scale of Rs. 320-400 was revised to Rs. 330-480. Adoption of this revised scale was

by way of furnishing option. By order dated 7.2.84, the General Manager GCF Jabalpur issued circular for implementation of new pay scale of Rs. 380-560. Said pay scale relates to people working in Jig Borers category only. In the organization under Defence Ministry particularly in Gun Carriage Factory, there are 15 classifications of trade. These classifications have been done by an expert classification committee. That pay scale 330-480 of Jig Borers has not been revised by the Expert Classification Committee to Rs. 380-560. That pay scales of other categories and trades were not revised. Revision of pay scale of Jig borers only was neither based on any special qualification/training nor is there any special reason for giving the aforesaid revision only to Jig Borers. This classification is arbitrary and without any rational basis. The persons who are appointed as Jig Borers are initially trained as Turners. After getting said training for 3 years, they get specialization for 2½ years in Jig Borers Job whereas in other trade the persons have to undergo training of 5½ years to 6 years. That being so, knowledge-wise also the workmen concerned in this dispute who are doing job in other trades are superior to Jig Borers. They are not given revision of pay scales.

5. There is anomaly that the person who is a failure in skilled craftsman training course is allowed to appear for one more chance and even if they fail, they are given the designation of B Grade Craftsman, B Grader's work is inferior to that of A Grade Craftsman but the expert Classification Committee again gave them the same pay scale as that of A Grade Craftsman. Persons who fail as skilled craftsman trainee also gets B Grade whereas those who pass get A Grade. The workmen connected with the reference are superior to Jig Borers by qualification, experience and technical ability and their pay scale cannot be less than the scale of Jig Borers. The upgradation of the pay scale of Jig Borer, Tool Setter etc. is not the outcome of any recommendations of the ECC or any other Expert committee. The Union submits that the workmen connected with present reference are holding higher qualification, knowledge are discriminated. Union prays for pay fixation similar to Jig borers.

6. IInd party management filed Written Statement at Page 6/1 to 6/5. Claim of Union/Association is opposed. IInd party submits that the dispute is not referable as GCF is not industry under I.D. Act, the employees are covered by CCS Rules claimed under Article 309 to 312 and are civil servants. That Industrial Standing Orders Act does not apply to GCF as the factory is engaged in sovereign functions of the State. That arms, ammunitions, equipments etc. are manufactured in IInd party as such it comes under sovereign functions as the supply is meant for defence of the country only. The dispute connected with workmen in respect of wages revised for Jig borers. It is submitted that the workman concerned in the dispute are skilled workmen (Craftsman-"A"). The circumstances under which the pay

scales were revised and basis for revising the pay scale is reasonable. The act of the management is not arbitrary.

7. IInd party submits that there is classification of jobs-unskilled, semiskilled, skilled workers "B" grade, skilled workers "A" grade and Highly skilled workers and in 3rd Pay Commission, different pay scales were provided for each of the categories. The commission also recommended that expert bodies should be set up for job evaluation of the workers. Based on said recommendation, the jobs in the Ordnance factories was on the basis of point scores respectively upto 205, 206 to 250, 251 to 328, 329 to 388 and 389 and above. The dispute connecting the workmen relates to workman carrying pay scales Rs. 320-400 to 330-480 as the point scores of the workmen was between the 329 to 388. The revision based on the points was accepted by the workmen. The points scores were not disputed by the workmen of the present dispute. There is no question of accepting or disputing new scales. The government issued order dated 16-10-81. It came to the notice of the depts. and various federations of the employees that a large number of trades which had obtained point scores for fitment in the scale of pay scales were not sanctioned the appropriate scales of pay. The Government therefore looked into the cases and setup anomaly committee on the basis of recommendations and review made by the said committee, Govt. issued corrigendum of their original sanction letter dated 16-10-81 which was later superseded by Ministry of Defence letter dated 11-5-83 and 17-10-83. Pay scales of Jib Borers A, B and C were revised from 320-400, 260-350, 210-290 to 380-560, 330-480 and 260-400 respectively. The points scores of the workmen involved of different trades is given in the Para-5 of the Written Statement. IInd party denies allegations of the claim of Union/Association for similar pay scale like revised to Jig Borer is also denied. IInd party prays for rejection of claim of workman.

8. Ist party filed rejoinder at page 8/1 to 8/3 denying material contentions of IInd party in Written Statement and reiterated its contention in Statement of Claim. That CAT in TA. No. 14/88 on 11-1-91 allowed benefits to the employees, notional seniority have been granted to the employees who donot get direct benefits of the ECC Committee's Report. That similarly situated persons appointed should get similar benefits. On such ground, Ist party prays for similarly of pay scales revised to Jig borers.

9. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of Gun Carriage Factory, Jabalpur (MP) in not giving equal scale of pay <i>i.e.</i> 380-560 to "A" Grade	In Affirmative
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workmen listed below compared to their counterparts *i.e.* Jig Borers and Tool and Gauge Fitters "A" and also equalizing them with "B" Grade Jig Borers and Tool and Gauge Fitters is legal?

- | | |
|---|-------------------------------------|
| (ii) If not, what relief the workman is entitled to?" | Relief prayed by Union is rejected. |
|---|-------------------------------------|

REASONS

10. From pleading discussed above, it is clear that Union is claiming revised pay scale of Rs. 380-560 allowed to Jig borer as per order dated 2-3-94. The claim of the Union is denied by management. Identical affidavit of evidence are filed by Shri Chandra Dayal Mishra. Unusual method of filing evidence is noticed that statement of witnesses is submitted separately and affidavit stating the contents of the statement of witness is correct is separately filed. The affidavit of witnesses Shri Chandra Dayal Mishra, Hari Shankar Verma, Yogesh Kumar Sharma, Kamlesh Rai Choudhary, Ramashankar Singh, A.K. Chatterjee are identical. That their pay scale was identical to jig borer. The expert classification committee was constituted for evaluating job contents of different categories, trades of employees. ECC Committee submitted report which was made available from 16-10-81. The ECC recommended identical pay scales for trade as well as of Jib Borer Rs. 330-480. Prior to 16-10-81 and by the E.C.C., his pay scale was kept at par with that of Jib Borer. That the management enhanced pay scale of Jig Borer to 380-560 in 1984 without recommendations of any expert committee. Said action of the management is arbitrary, not justified. The applicant's trend was not considered at par with jig borer is 1984. All the witnesses claim to be entitled to parity with jig borer and Tool Guage fitter (A).

11. Shri Chandra Dayal Mishra in his cross-examination says that in 1984, he was working as A Grade. At that time work of Miller and jig borer were different. In IIIrd and IVth Pay Commission, there was anamoly committee. The Union did not submit memorandum to anamoly committee claiming parity of pay scales with jig borers. He agrees that Anamoly Committee includes technical expert. Hari Shankar Verma in his cross-examination says in 1984, he was holding grinder special grade post. That the employee working as grinder cannot be transferred to Jig borer. The work of both the post are different. Shri Yogesh Kumar Sharma was not cross-examined. Shri Kamlesh Choudhary in his cross-examination says in 1982 he was working in highly skilled grade II in pay scale Rs. 330-480. Same pay scale was given to jig borers. That rules for recruitment for both the posts are same. Those rules are called SR rules. In 1981, pay scales were revised on recommendations of Expert

Classification Committee. Thereafter anamoly committee was constituted. He did not remember its date. On recommendations of both the committee, pay scales were revised. He knows about expert committee. The management Ramashankar Singh in his cross-examination says that he was working in chargeman Grade-II in 1984. He was working as Turner A grade in highly skilled Grade II. He has completed training of turner. He denies the work of Jig borer is difficult. Therefore they were given promotion in 1984. That the management turned turner as jig borer. In 1984, they had approached ALC for pay scale of jig borer. That work of turner and jig borer are different. Shri A.K. Chatterjee in his cross-examination says in 1988, he was working as Highly Skilled Grade I. That the work of jig borer and his work are different.

12. The evidence of all those witnesses clearly shows that the work of the employees connected with the reference is different from the work of jig borer. The management has not adduced any evidence. Written notes of argument are submitted by both parties consistent with their respective contents in the pleadings.

13. Counsel for Union relies on ratio held in case of—

"Shri Y. Jaganmohan Reddy and others *versus* Secretary, Ministry of Home Affairs, reported in 1993(23) Administrative Tribunal Cases 42. The ratio held in the case that parity if established must be observed from that date."

The claim of Union claiming parity of pay scales to jig borers is not supported by cogent evidence. The evidence discussed above doesnot show that the work of employees connected with reference were not performing similar work therefore the principle in above cited case cannot be applied to case at hand.

14. Union further relies on ratio held in case of—

"Alvari Nornha Ferriera and another *versus* Union of India and others reported in 1999(4) Supreme Court Cases 408. Their Lordship dealing with parity in Employment and pay scales of officers held nature of judicial work is substantially the same though pendency of cases may differ from court to court. There was parity in pay scales between Judicial officers of Union Territories of Delhi and Goa but this parity disturbed in 1982 by granting better pay scales to Delhi Judges. Held Goa Judges entitled to restoration of parity."

Considering the evidence discussed above, there is no policy in the work of employees connected with the reference and jig borers. The ratio cannot be applied in the present case. For the same reasons, the judgment by CAT, Bangalore in Original Application 1989/2000 decided on 3.1.2002 cannot

be beneficially applied to present matter. Principles of equal pay for equal work cannot be applied to present case as held by the Lordship in the matter of teachers teaching in different educational institution in case of State of Haryana and another *versus* Ramchander and another reported in 1997 (5) Supreme Court Cases 253.

15. Learned counsel for IInd party Shri P. Shankaran relies on ratio held in—

"Case of State of Madhya Pradesh and others *versus* Ramesh Chandra Bajpai reported in 2010 (1) Supreme Court Cases (L&S) 287. Their Lordship of the apex Court dealing with equal pay for equal work held it can be invoked only when the employees are similarly situated. Further held similarity in designation, or nature on quantum of work is not determinative of equality in the matter of pay scales. Court has to consider factors like the source and mode of recruitment, qualification, nature of work, value thereof, experience, confidentiality, functional need etc."

Ist party Union has not adduced evidence on any of those points.

16. Reliance is also placed in ratio held in case of—

"Ramesh Singh *versus* Union of India and others reported in 2008 AIR SCW 2221. Their Lordship dealing with Pay Parity. Army personnel working in General Reserve Engineering Force. Pay parity not given by 4th and 5th Pay Commission. Their Lordship held claim of Army personnel cannot be allowed. The court has limited scope for interference with recommendations of Pay Commission. Their Lordship further held matter of expert bodies like pay commission court normally would not substitute its views for those of expert bodies."

17. As per evidence of the witnesses of Ist party, there was Anamoly Committee. The expert Classification committees and Anamoly Committee were appointed. The Union did not submit their grievance to Committee claiming parity between both the jobs. The Court cannot interfere with the revision of pay scales allowed to jig borers on recommendation of Expert Classification Committee. Claim of employees connected with the reference were not subject of scrutiny by anamoly committee therefore without recommendation of such Expert Committee, the claim of Ist party union for parity of pay scales as revised to the jig borers cannot be allowed. For above reasons, I record my finding in Point No. 1 in Affirmative.

18. In the result, award is passed as under:—

- (1) Action of the management of Gun Carriage Factory, Jabalpur (MP) in not giving equal scale of pay *i.e.* 380-560 to "A" Grade workmen listed below compared

to their counterparts *i.e.* Jig Borers and Tool and Gauge Fitters "A" and also equalizing them with "B" Grade Jig Borers and Tool and Gauge Fitters is legal.

(2) Relief prayed by Union is rejected.

R.B. PATLE, Presiding Officer.

नई दिल्ली, 23 दिसम्बर, 2013

का०आ० 95.—औद्योगिक विवाद अधिनियम, 1947, (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-II, चण्डीगढ़ के पंचाट (संदर्भ संख्या 990/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 23.12.2013 को प्राप्त हुआ था।

[सं० एल-12011/44/2000-आई आर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 23rd December, 2013

S.O. 95.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 990/2005) of the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh as shown in the Annexure in the Industrial Dispute between the management of UCO Bank and their workman, received by the Central Government on 23.12.2013.

[No. L-12011/44/2000-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

PRESENT: SRI KEWAL KRISHAN, Presiding Officer

Case No. I.D. No. 990/2005

Registered on 16.9.2005

The General Secretary, UCO Bank Empls. Union (Regd), Central Office, UCO Bank, G.T. Road, Jalandhar City.

.....Petitioner

Versus

UCO Bank, The Manager, UCO Bank, Branch Office, Industrial Area, Patiala

.....Respondent

APPEARANCES:

For the workman : Ex parte.

For the Management : Sh. N. K. Zakhmi, Advocate

AWARD

(Passed on 5.11.2013)

Central Government *vide* Notification No. L-12011/44/2000/IR(B-II) Dated 12.6.2000, by exercising its powers under Section 10 Sub-section (1) Clause (d) and Sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to the Tribunal:—

"Whether the action of the management of UCO Bank is not releasing the increment to Sh. H.S. Khalsa is just and legal? If not, what relief the concerned workman is entitled to and from which date?"

In response to the notice the workman appeared and filed statement of claim pleading that he was working as Clerk with the respondent-management. He was served a charge-sheet dated 12.9.1995 and thereafter an Inquiry Officer was appointed who recorded the findings against him and the disciplinary authority imposed the penalty as follow:—

"Charge Proved/not proved	Punishment
1. Proved	One future increment of Sh. H.S. Khalse is stopped with immediate effect.
2. Not proved	Exonerated
3. Proved	One future increment of Sh. H.S. Khalse is stopped with immediate effect.
4. Proved	One future increment of Sh. H.S. Khalse is stopped with immediate effect.
5. Proved	One future increment of Sh. H.S. Khalse is stopped with immediate effect.

The punishment awarded in respect of charge No. 1, 3, 4 and 5 will run concurrently."

That the inquiry proceedings are illegal. Accordingly the punishment awarded is also illegal. That no punishment is to be awarded to him, and as such, the order dated 21.5.1997 be set aside and he be granted all the benefits.

Respondent-management filed reply pleading that workman with *mala fide* intention converted the FDR of his uncle of Rs. 78,000/- into small denomination by opening an account No. 2778 in his name and in the name of Jit Kaur and Bahadur Singh on 6.8.1993. He also withdrew

a sum of Rs. 10100/- from the said account without any authority which amounted to misconduct and accordingly he was charged and after conducting regular inquiry, charges were proved against him and the penalty imposed is legal and valid.

The inquiry was held to be fair *vide* order dated 30.9.2010.

The workman was proceeded *ex parte vide* order dated 24.8.2010.

I have heard Mr. N.K. Zakhmi counsel for the management on the question whether the punishment awarded is proper?

As reproduced above, four charges were proved against the workman and the punishment awarded was stoppage of one future increment with "immediate effect" on each account and was further ordered that the punishment awarded shall run concurrently. Now, according to the workman the stoppage of increment was without cumulative effect and the increment should have been released in the next year. But the bank intimated *vide* letter dated 3.10.1999 that stoppage of increment was with cumulative effect and this contention of the bank is wrong. It is settled law and the rules are also clear that when punishment of stoppage of increment is to be awarded, it is to be awarded with or without "cumulative effect", but in the punishment order no such wording has been used and only the word "immediate effect" has been used. The words "immediate effect" cannot be construed that the increment was stopped with "cumulative effect". Since the punishment has not been awarded as per rules and therefore the same is liable to be set aside and ordered accordingly.

However, the management is given an opportunity to pass proper punishment as per rules at its discretion within four months on receipt of the copy of the award after publication; failing which the management is to release the increment of the workman with all the benefits thereon. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 23 दिसम्बर, 2013

का०आ० 96.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चण्डीगढ़ के पंचाट (55/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 23.12.2013 प्राप्त हुआ था।

[सं० एल-12012/167/2004-आई आर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 23rd December, 2013

S.O. 96.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 55/2004 of the Cent. Govt. Indus. Tribunal-cum-Labour Court-II, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 23.12.2013.

[No. L-12012/167/2004-IR(B-II)]
RAVI KUMAR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT-II, CHANDIGARH

PRESENT: SRI KEWAL KRISHAN, Presiding Officer

Case No. I.D. No. 55/2004

Registered on 17.1.2005

Sh. Govind Sharma, S/o Sh. Roshan Lal Sharma R/o Ram Devan Chowk, Bhattu Kalan, Tehsil Bhattu, Fetehabad.

...Petitioner

Versus

The Manager, Punjab National Bank, Bhattu Kalan, Branch (Anaj Mandi), Bhattu Mandi, Fatehabad.

... Respondents

APPEARANCES:

For the Workman : Ex-parte

For the Management : Sh. Arvind Rajotia

AWARD

(Passed on 13.11.2013)

Central Government *vide* Notification No. L-12012/167/2004-IR(B-II) dated 21.12.2004, by exercising its powers under Section 10 Sub-section (1) Clause (d) and Sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether Shri Govind Sharma S/o Sh. Roshan Lal Sharma was employed as a Peon-cum-Daftri during the period from 2.1.2001 to 16.4.2002 by the management of Punjab National Bank? If so, whether the action of the management in terminating him from service *w.e.f.* 16.4.2002 is just and legal? If not, what relief the workman is entitled to?"

In response to the notice the workman appeared and filed statement of claim pleading that he was appointed by the management as Peon-cum-Daftri on 2.1.2001 on a

consolidated salary of Rs. 800/- per month. He used to work from 10 am to 5 pm and was carrying the books of the bank from one place to another and used to fill up the water in the pitcher, serve water to the customers and used to serve tea to the staff. His services were terminated on 16.4.2002 without following the provisions of the Act and even the persons junior to him were retained by the management. Since his services were terminated against the provisions of the Act, he is entitled to be reinstated in service with all the benefits.

The management filed written statement pleading that the workman was never appointed as Peon-cum-Daftri and he never worked for the management. He was only allowed to sell tea and snacks and on that account payment was made to him. That there was no relationship of 'employer and employee between the parties and as such there is no 'industrial dispute' and the petitioner is not a 'workman' as defined in the Act.

Workman was proceeding *ex parte vide* order dated 26.10.2000 and did not lead any evidence.

On the other hand management examined Sh. Krishan Lal Sharma who filed his affidavit reiterating the case as stated in the written statement.

I have heard Sh. Arvind Rajotia learned counsel for the management.

It is the case of the workman that he was appointed as Peon-cum-Daftri on 2.1.2001 on a consolidated salary of Rs. 800/- per month but he did not lead any evidence to prove the said fact and to prove that he ever performed the duties of Peon-cum-daftri with the respondent management. In the absence of any evidence, it cannot be said that he was an employee of the management and as such there is no relationship of employer and employee between the parties and it cannot be said that he was employed from 2.1.2001 to 16.4.2002 and his services were terminated. Thus the workman is not entitled to any relief. Reference is answered against him. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 23 दिसम्बर, 2013

का०आ० 97.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दिल्ली मेट्रो रेल कार्पोरेशन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ संख्या 80/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 23.12.2013 को प्राप्त हुआ था।

[सं० जैड-13025/8/2001-आर सी (सी-2)आई आर (डीयू)]

पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 23rd December, 2013

S.O. 97.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 80/2013) of the Central Government Industrial Tribunal/Labour Court-1, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of DMRC and their workman, which was received by the Central Government on 23/12/2013.

[No. Z-13025/8/2001-RC(C-2)-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE DR. R.K. YADAV PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, DELHI

I.D. No. 80/2013

Shri Nur Alam
S/o Mohd. Yakub Ali,
R/o Shavad J-387,
J.J. Colony, Delhi-81.

...Workman

Versus

1. M/S Shashi Lift Shift Corpn.
C-21, Achriya Niketan,
Near ICICI Bank,
Delhi.
2. M/s Delhi Metro Rail Corp. Ltd.
Metro Bhawan Fire Brigade Lane,
Barakhamba Road, New Delhi

...Management

AWARD

Delhi Metro Rail Corporation (in short the Corporation) awarded contract in favour of M/s Shashi Lift Shift Corporation (in short the contractor) to carry out certain jobs, mentioned in the contract agreement. Contractor availed services of Shri Nur Alam as a mechanic to discharge its contractual obligations. Shri Nur Alam was working with the contractor since January, 2005. The contract employee raised a demand for leave encashment, ESI, provident fund, bonus etc. His demand allegedly annoyed the contractor, who dispensed with the services of Shri Nur Alam on 10.05.2011. Shri Nur Alam raised a demand for reinstatement in service, which demand was not conceded to by the contractor. He approached the Delhi Pradesh General Mazdoor Kalyan Morcha (in short the union) for redressal of his grievance. The union raised a dispute before the Conciliation Officer. The Conciliation Officer entered into conciliation proceedings. When 45 days expired after moving of application before the Conciliation Officer, Shri Nur Alam raised a direct dispute before this Tribunal under sub-section (2) of Section 2A of the

Industrial Disputes Act, 1947 (in short the Act). Since the dispute was raised within the period of limitation, as enacted by sub-section (3) of Section 2A of the Act, it was registered an industrial dispute.

2. Claim statement was filed by Shri Nur Alam pleading therein that he was serving the contractor since January 2005 as a mechanic. He served his employer diligently and honestly. He gave no chance of complaint to his employer. Since benefits, such as leave encashment, ESI, provident fund, bonus etc. were not provided, he made a demand in that regard. The contractor felt annoyed and terminated his services in an illegal manner on 10.05.2011. His wages for 10 days were withheld. One months' notice or pay in lieu thereof was not given to him. Retrenchment compensation was also not paid to him. Termination of his services by the contractor was not in consonance with labour laws. He claims reinstatement in service with continuity and full back wages.

3. Claim was demurred by the Corporation, pleading therein that there was no relationship of employer and employee between the parties. Claimant was never engaged by the Corporation for any job. His wages were never paid by the Corporation. His services were neither availed nor controlled by the Corporation. As such, Corporation was not in a position to terminate his services. Claimant was an employee of the contractor. His claim deserves dismissal, hence it may be dismissed.

4. The contractor opted not to file written statement. On the other hand, Shri Shashi Poddar, proprietor of the contractor firm, entered into a settlement with the claimant. He made statement on oath, contents of which are reproduced below:

"I offer a sum of Rs. 55,000.00 to the claimant towards the claim of his back wages, leave encashment, earned leave provident fund and other benefits, which were admissible to him from 10.05.2011 till date. A sum of Rs. 10,000.00 has been paid to the claimant outside the court premises and a cheque No. 155378 drawn for a sum of Rs. 45,000.00 on Mayur Vihar branch of Bank of India is tendered to the claimant towards his above benefits. Beside the payment of Rs. 55,000.00, the management would reinstate the claimant in its services from 15.09.2013. With the above offer, which has been accepted by the claimant, nothing remains to be adjudicated in the dispute."

5. The claimant accepted the terms of settlement offered to him by his employer. He also made statement on oath, which is reproduced thus:

"I have heard the statement made by Shri Shashi Poddar. I accept a sum of Rs. 55,000.00 towards my

wages, leave encashment, earned leaves, provident fund, retrenchment compensation, notice pay and other benefits available to me from M/s Shashi Lift Shift Corporation from 10.05.2011 till date. A sum of Rs. 10,000.00 in cash has been paid to me outside the court premises. Cheque No. 155378 drawn for a sum of Rs. 45,000.00 on Mayur Vihar branch of Bank of India has been handed over to me by Shri Poddar. I will join services of M/s. Shashi Lift Shift Corporation from 15.09.2013. On the terms of the above settlement, nothing remains to be adjudicated in the dispute, which was raised by me under sub-section (2) of Section 2A of the Industrial Disputes Act, 1947. The said dispute may be answered as settled, in view of the above facts."

6. In view of the facts that parties have entered into a settlement, Shri Shashi Poddar paid a sum of Rs. 10,000.00 in cash outside the court room and cheque No. 155378 drawn for Rs. 45,000.00 on Mayur Vihar branch of Bank of India, towards balance amount settled between the parties, has been given to the claimant to fulfil terms of the settlement, besides offer of job in favour of the claimant on the same post with effect from 15.09.2013, terms of the settlement have been accepted and acted upon by the claimant, nothing remains to be adjudicated. However, this Tribunal thinks it expedient to command Shri Shashi Poddar to keep sufficient amount in the bank so that the cheque would be honoured when presented for encashment and not to back out from the offer of engaging the claimant with effect from 15.09.2013. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 4.9.2013

DR. R.K. YADAV, Presiding Officer

नई दिल्ली, 23 दिसम्बर, 2013

कांआ 98.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार संभागीय अधिकारी टेलिग्राफ के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या CGIT/LC/R/220/93) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23/12/2013 को प्राप्त हुआ था।

[सं एल-40012/132/92-आई आर (डीयू)]

पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 23rd December, 2013

S.O. 98.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/220/93) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in

the Industrial Dispute between the employers in relation to the management of Divisional Officer, Telegraphs and their workman, which was received by the Central Government on 23/12/13.

[No. L-40012/132/92-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/220/93

PRESIDING OFFICER: SHRI R.B. PATLE

Shri Brij Lal Kori,
S/o Shri Chhotelal Kori,
C/o Shri Anil Pandey Advocate,
Telephone Complex,
Jabalpur

... Workman

Versus

Divisional Officer,
Telegraphs, Sagar

... Management

AWARD

(Passed on this 1st day of November, 2013)

1. As per letter dated 12-10-93 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-40012/132/92-IR(DU). The dispute under reference relates to:

"Whether the action of the management of Sub Divisional Officer, Telegraph, Sagar (MP) in terminating the services of Shri Brij Lal Kori, Ex-casual labour *w.e.f.* 17-7-90 is legal and justified? If not, what relief the concerned workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party workman filed statement of claim at Page 3/1 to 3/3. The case of the workman is that he was offered job of a casual labour by Sub Divisional Officer, Telegraph Department, Sagar in September 1981 and was allowed to continue till July 1990. The period of his working is shown 766 days from 1981 to 1987, 289 days from 1987 to 1988, 231 days in the year 1989 and 180 days from January 1990 to July 1990. That Department of Personnel and Training has *vide* letter dated 21-3-88 and 7-6-88 laid down certain instructions and conditions for regularization of casual workers in Central Govt. Offices who were recruited before 7-6-88. Said authority *vide* letter dated 8-4-91 advised to all authorities for relaxation of Employment Exchange procedure and upper age limit for such regularization. In a similar manner, the Govt. of India Deptt. of

Telecommunications, STN Section issued instructions to all the Heads of Administrative Officers including Telecom Department. To follow such regularization of services of casual workers in Group D posts in relaxation of Employment Exchange Procedure and upper age limit. In similar manner, Govt. of India, Department of Telecom issued instructions to all heads of all Administrative officers including Telecom Deptt. to follow such regularization of services of casual workers in Group D post. That in consonance with said circulars, SDO(Tel) Saugor notice dated 22-1-99 demanded requisite documents *i.e.* Caste Certificate, School Certificate etc. from the Ist party workman. He has submitted documents to IInd party on 6-4-90.

3. However his services were retrenched vide notice dated 29-1-90 from 28-2-90 for completion of construction work. That his services were terminated without notice, no retrenchment compensation was given. The provisions of Section 25-F of I.D. Act are violated. On such grounds, he prays for his reinstatement with back wages and regularization.

4. IInd party file Written Statement at Page 5/1 to 5/2. IInd party submits that workman were engaged from time to time as and when required. Ist party was engaged in 1981 and till last date on which his services were engaged had not put in continuous service of 240 days continuous service required under Section 25 N of I.D. Act. That workman was given continuous break of 28 months from June 1983 to September 1985. That the services of casual labours in the department of post and Telegraph, Telecom are governed by circulars issued from time to time. In pursuance of judgments of Hon'ble Supreme Court, workman not being covered by the circulars issued by the Government. Therefore he is not entitled to regularization of his services. As he had not completed 240 days continuous service, he is not covered as workman under Section 25-B of I.D. Act. there is no question of violation of Section 25-F of I.D. Act. On such ground, IInd party prays for rejection of claim of workman.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of Sub Divisional Officer, Telegraph, Saugor (MP) in terminating the services of Shri Brij Lal Kori, Ex-casual labour <i>w.e.f.</i> 17.7.90 is legal?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Relief prayed by workman is rejected.

REASONS

6. Though workman is challenging termination of his services in violation of Section 25-F of I.D. Act. That he was not served with notice. Retrenchment compensation was not paid to him. Above allegation of workman are denied. The workman has failed to participate in the reference proceeding. He has not adduced any evidence in support of his claim. The evidence of workman was closed on 29-09-2010.

7. Management filed affidavit of evidence of witness Shri R.G. Gohe covering most of the contentions of IInd party that the workman had not completed 240 days continuous service during any of the year. That break of 28 months was given in his service. The details of the casual labours granted regularization of temporary status in 1989 are stated in his affidavit. The witness is not fulfilling those conditions. The evidence of workman remained unchallenged. I donot find reason to disbelieve evidence of management's witness. As claim of workman is not supported by any evidence, I record my finding in Point No. 1 in Affirmative.

8. In the result, award is passed as under:—

- (1) Action of the management of Sub Divisional Officer, Telegraph, Saugor (MP) in terminating the services of Shri Brij Lal Kori, Ex-casual labour *w.e.f.* 17-7-90 is proper.
- (2) Relief prayed by workman is rejected.

R. B. PATLE, Presiding Officer

नई दिल्ली, 23 दिसम्बर, 2013

का०आ० 99.—औद्योगिक विवाद अधिनियम, 1947, (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत संचार निगम लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या CGIT/LC/R/23/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 23/12/2013 को प्राप्त हुआ था।

[सं० एल-40012/166/2002-आई आर (डीयू)]

पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 23rd December, 2013

S.O. 99.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/23/2003) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BSNL and their workman, which was received by the Central Government on 23/12/13.

[No. L-40012/166/2002-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, JABALPUR****No. CGIT/LC/R/23/2003**

Presiding Officer : SHRI R.B. PATLE

Shri Dhanji Yadav,
S/o Shri Rampal Yadav,
R/o Gandhi Colony,
Shujalpur Mandi,
PO Shajulpur.

...Workman

*Versus*The Telecom District Manager,
BSNL, Office of TDM,
Shajapur.

...Management

AWARD

(Passed on this 30th day of October, 2013)

1. As per letter dated 9-1-2003 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-40012/166/2002-IR(DU). The dispute under reference relates to:

"Whether the action of the management of Telecom District Manager, Shajapur in terminating the services of Shri Dhanji Yadav S/o Shri Rampal Yadav *w.e.f.* 1-10-96 is justified? If not, to what relief the workmen is entitled to?"

2. After receiving reference, notices were issued to the parties. Workman submitted Statement of Claim at Page 5/3 to 5/6. Case of workman is that he was appointed as labour. He was working under Sub Division Engineer, Shajapur from January, 1992. During 1992 to 93, he was working at Tilawat Exchange. Said exchange was opened on 21-11-92. He was working in said exchange till 6-8-93. During the period 7-8-93 to 16-3-95, he was working as casual labour at Arniya kala. During period 1-4-95 to 1-10-96, he was working under SDO Sujalpur. That as per directions Hon'ble apex Court, the scheme for regularization of casual employees was declared. Ist party workman was entitled to regularization as he was working in IInd party prior to 30-3-85. That he has worked for more than 240 days. He was not regularized. His services were discontinued without notice in violation of Section 25-F of I.D. Act. On such ground, he prays for his reinstatement with consequential benefits. He also prays for regularization in service.

3. IInd party filed Written Statement at Page 8/1 to 8/2. The claim of workman is totally denied. It is denied that workman was appointed as labour in the Division since

January 1992. That since workman has not worked in Division, there is no question of regularization of services. There was no question of terminating his services. It is denied that the workman had worked more than 240 days in a calendar year. The termination of services without notice is denied. There was no question of terminating his service as workman did not work in the Division. On such ground, IInd party prays for rejection of claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of Telecom District Manager, Shajapur in terminating the services of Shri Dhanji Yadav S/o Shri Rampal Yadav <i>w.e.f.</i> 1-10-96 is legal?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Relief prayed by workman is rejected.

REASONS

5. Though workman is challenging his termination of service claiming that he was appointed as labour since January 1992 and he worked till 1996. He is entitled for regularization as per scheme framed for regularization casual employees. That he had completed 240 days continuous service during each of the year. All those contentions of management are denied by management. Workman did not adduce evidence in support of his claim. The evidence of workman is closed. On 9-10-2010, management filed affidavit of witnesses Bhagchand Joshi. Workman failed to cross-examine the witness. The witness of the management has stated that as per record available in office, TDE Shajapur, workman was never engaged by management. His claim for regularization is the department is baseless, prevaluous. Workman is not eligible for regularization. The evidence remained unchallenged. I donot find reason to discard his evidence. As workman has not adduced any evidence in support of his claim, the termination of his services without notice is not established. Therefore I record my finding in Point No. 1 in Affirmative.

6. In the result, award is passed as under:—

- (1) Action of the management of Telecom District Manager, Shajapur in terminating the services of Shri Dhanji Yadav S/o Shri Rampal Yadav *w.e.f.* 1-10-96 is proper.
- (2) Relief prayed by workman is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 24 दिसम्बर, 2013

AWARD

(Passed on this 14th day of August, 2013)

का०आ० 100.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सी०पी०डब्ल्यू०डी० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या CGIT/LC/R/70/92) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24/12/2013 को प्राप्त हुआ था।

[सं० एल-42012/168/91-डी-2 (बी)-आई आर (डीयू)]

पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th December, 2013

S.O. 100.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/LC/R/70/92) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of CPWD and their workman, which was received by the Central Government on 24/12/2013.

[No. L-42012/168/91-D-2(B)-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

No. CGIT/LC/R/70/92

Presiding Officer : SHRI R.B. PATLE

Miss Madhu Adhikari,
D/o Shri Bachhan Singh Adhikari,
Resident of Nobaled Diagnosit Sector,
37/1-Nilgiri Apartment,
South Tukoganj,
Indore (MP)

...Workman

Versus

Union of India through Secretary,
Department of Central Public
Works Department,
New Delhi.

Superintending Engineer,
Central Public Works Department,
Bhopal/Nagpur.

Executive Engineer (Civil),
Central Division, Central Public
Works Department, Indore

...Management

1. As per letter dated 31-3-92 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-42012/168/91-D-2(B). The dispute under reference relates to:

"Whether the action of the Executive Engineer, Civil Central Division Indore in terminating the services of Miss Madhu Adhikari, Clerk/typist w.e.f. 24-11-89 is justified? If not, what relief he is entitled to?"

2. After receiving reference, notices were issued to the parties. Workman filed Statement of claim at Page 2/1 to 2/8. Case of Ist party workman is that she was initially appointed as clerk cum typist on daily wages on 17-3-86. She continued to work till January 1987. Her services were terminated. Said employment was in Electrical division of Executive Engineer, CPWD, Indore. Regular appointee joined in Electrical division. Therefore her services were shifted to civil division. She was appointed on 2-3-87 as clerk-cum-typist on daily wages Rs. 20.25 per day. That her appointment was against clear vacancy. She was continued till 24-9-88 till her services were terminated.

3. Again she was engaged by respondents on contract basis as on monthly salary Rs. 755. The appointment order was issued on 27-9-88. Her services were terminated without notice from 27-9-89. Ist party submits that she had challenged order of her termination before filing original application 244/89 before CAT, Jabalpur. Order of statusquo was passed in the matter. As per judgment and order dated 11-2-91, the CAT, Jabalpur declined to interfere in the matter for the reasons that she was not holding regular civil post but purely engaged on daily wages. Thereafter she had approached for conciliation proceeding and dispute has been referred after failure report was submitted. The Ist party workman submits that her services are terminated in violation of Section 25-F though she had completed 240 days continuous service without issuing notice or paying retrenchment compensation. She was illegally terminated. On such grounds, workman prays for her reinstatement with consequential benefits.

4. IInd party filed Written Statement at Page 9/1 to 9/5. IInd party submits that workman was purely working on daily wages in electrical division. The certificate was not issued from Electrical division. Rather the experience certificate made have been issued for her better prospects. It is reiterated that the workman was working as daily wage typist as per order dated 2-3-87 on temporary basis. It was condition in the order that her services would be terminated without giving any reason or notice, she would not be entitled to seniority, absorption in the deptt. That the workman was engaged on contract basis as per order dated

27-9-88. The rates of typing charges were Ist page Rs. 2.50, other copies 50 paise, statement size Rs. 5.50 and other copies Re. 1, cutting the stencil Rs. 4/- each stencil. That she was working on daily wages on contract basis. Workman was not holding regular post. Her services could be terminated without assigning reason. Violation of Section 25-F is denied. IInd party reiterates as workman was appointed on daily wages contract basis, she is not entitled to notice, termination of her services is not legal. IInd party prayed for rejection of her claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the Executive Engineer, Civil Central Division Indore in terminating the services of Miss Madhu ADhikari, Clerk/typist w.e.f. 24-11-89 is legal?	In Negative
(ii) If not, what relief the workman is entitled to?	As per final order.

REASONS

6. Ist party workman is challenging termination of her services being in violation of Section 25-F, his services are terminated without notice, no retrenchment compensation is paid. IInd party denies the allegation of workman. It is submitted that workman was working on daily wages/contractual basis. Her services is not entitled to notice. Workman filed affidavit of her Evidence stating that she was appointed in CPWD Electrical Division, Indore on 17-3-86, she continued to work till January 87 i.e. for more than 10 months. That she was again appointed in CPWD Indore from 2-3-87 to 24-9-88. Thereafter she was working in the CPWD Indore. That she was appointed on monthly salary Rs., 755/-. Thereafter she was working on contract basis till 24-11-89. Her services were terminated without notice. In her cross-examination, workman says that she had appeared for execution for Staff Selection Board twice but she failed. Candidate selected by SSC was appointed in her place. Her rest of the evidence is not challenged in her cross-examination. Thus the evidence of workman that she was continuously working for more than 240 days remained unchallenged.

7. The management's witness P.R. Patil filed affidavit of his evidence. The witness of the management has stated that the post of LDC is filled as per rules by Govt. of India, 70% post are filled by direct recruitment, 5% by departmental qualifying exam by Group D, 5% by seniority cum fitness basis by Group D staff, 20% vacancy are filled from LDC belonging to Central Secretariat Clerical services.

That services of the workman were purely temporary subject to appointment of selected candidates. Provisions of Section 25-F were not required to be followed. Evidence of management's witness remained unchallenged. He was not cross-examined. The evidence of workman remained unchallenged that she has completed 240 days continuous service, her services were terminated without notice or paying retrenchment compensation. The evidence of management's witness on above point is silent. Thus it is clear that services of workman are terminated in violation of Section 25-F of I.D. Act and as such illegal. For above reasons, I record my finding in Point No. 1 in Negative.

8. **Point No. 2-** in view of my finding on point No. 1, termination of services of workman is illegal being in violation of Section 25-F question arises to what relief the workman is entitled? From evidence in cross-examination of workman, it is clear that she failed in Staff Selection Board, therefore she is not entitled for reinstatement. For violation of Section 25-F, her services are terminated without paying retrenchment compensation therefore reasonable compensation would be appropriate in the matter. In my considered view, considering length of service rendered in the establishment of IInd party, compensation Rs. 60,000/- would be proper and reasonable. Accordingly I held and record my finding on Point No. 2.

9. In the result, award is passed as under:—

- (1) The action of the Executive Engineer, Civil Central Division Indore in terminating the services of Miss Madhu Adhikari, Clerk/typist w.e.f. 24-11-89 is illegal.
- (2) IInd party is directed to pay compensation Rs. 60,000/- to workman.

Amount as per above order shall be paid to workman within 30 days. In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 24 दिसम्बर, 2013

का०आ० 101.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दूरसंचार प्रशिक्षण केंद्र के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या CGIT/LC/R/23/89) को प्रकाशित करती है जो केन्द्रीय सरकार को 24/12/2013 को प्राप्त हुआ था।

[सं० एल-40011/13/87-डी-2(बी)-आईआर (डी यू)]

पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th December, 2013

S.O. 101.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/23/89) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of telecom Training Centre, Jabalpur and their workman, which was received by the Central Government on 24/12/2013.

[No. L-40011/13/87-D-2(B)-IR (DU)]
P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/23/89

Presiding Officer : SHRI R.B. PATLE

Shri Shyamanand & other Chowkidar,
Telecom Training Centre,
Ridge Road
Jabalpur

...Workman

Versus

General Manager,
Telecom Training Centre,
Ridge Road,
Jabalpur (MP)

...Management

AWARD

(Passed on this 12th day of September, 2013)

1. As per letter dated 18-1-85 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-40011/13/87-D-2(B). The dispute under reference relates to:

"Whether the action of the management of Telecom Training Centre, Jabalpur in taking 12 hours duties from Shri Shyamanand and other watchmen since 1965 is justified? If not, to what other relief the workmen are entitled to and from what date?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted Statement of claim at Page 2/1 to 2/6. The case of Ist party workmen No. 1 to 8 is that they were working as chowkidar/watchman in Telecom Training Centre, Ridge Road, Jabalpur. Most of the chowkidars were grown old. Many of the chowkidars retired from service. That chowkidars were required to work 8 hours per day or 48 hours in a week in earlier part of their service. Since 1965 onwards, they were compelled to render service for 12 hours per day of 72 hours per week. The

work for 4 hours is extracted in excess/prescribed hours. The claim is for wages for extra duty hours. They rendered to time office order dated 18-3-72 prescribing 8 hours duty per day. That the excess duty has caused mental as well as physical effort on account of alertness in duty. That DGP issued necessary instructions to various heads of circle to fix duty hours of chowkidars. On 18-6-83, Director General of Post, New Delhi issued circulars laying down following clarifications—

- (a) Chowkidars employed to keep a general watch over the buildings at night which are locked and secured may be given 12 hours duty
- (b) In offices, which are open all the 24 hours, and where there is a need to check public staff or stores/hostels/ duties of chowkidars should be 8 hours
- (c) In store depots/dumps, where the chowkidars not only look after the custody of stores but also help in checking stores taken in/out during the working hours may be allotted 8 hours of duty.

On such grounds, workman submits that 12 hours extracted from them is in excess of 8 hours duty prescribed. They prayed for payment of arrears for excess 4 hours duty performed by them.

3. IInd party filed written statement at Page 3/1 to 3/4 Claim of applicants are denied. That duty hours of chowkidars and night guards is kept 12 hours per day. Chowkidar Shri Achchhulal and 13 others raised similar dispute in Case No. CGIT/LC/C/517/1980 which was rejected on 30-6-84. Miscellaneous Petition No. 3022/1985 was dismissed on 20-4-86. Thereafter workmen applied for reference under Section 10 of I.D. Act. The dispute is to the working hours of chowkidars of deptt. Having finally settled. The chowkidars who worked donot entail sustained mental or physical strain and those whose work required constant physical and mental strain. The duties are fixed 12 hours per day respectively. That the contention of workmen is that they should not be asked to work more than 8 hours. There is no dispute, matter is finally adjudicated in GCM that adjudication is not required.

4. Workmen filed rejoinder at Page 5/1 to 5/3 reiterating their contentions. The management of IInd party filed rejoinder at Page 4.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|--|----------------|
| (i) Whether the action of the management of Telecom Training Centre, Jabalpur in taking 12 hours duties from Shri Shyamanand and other watchmen since 1965 is legal? | In affirmative |
|--|----------------|

- (ii) If not, what relief the workmen are entitled to?" Relief prayed by workman are rejected.

REASONS

6. In support of their claim, workman filed affidavit of Devnath Singh, Vinod Kumar Dagor, Buddular, Roshan Singh and Manohar Singh but they were not cross-examined on their affidavits. Management filed affidavit of Shri S.P. Tiwari alongwith application for dismissal of the claim. Thereafter parties remained absent. No further evidence is adduced in the matter. Copy of Judgment in C/517/1980 is produced on record. The claim of the watchman Achchulal and 13 and others under Section 33(C)(2) was rejected observing that the claim may be decided in Reference under Section-10 of I.D. Act. A copy of judgement by CAT, Jabalpur in Application No. 31 & 72/2009 in respect of six watchman is produced on record. The reading of judgment shows that W.P.No. 1615 & 1616/2003 filed by six chowkidars of Training Institute Jabalpur were transferred to CAT, Jabalpur. The facts stated by the applicants were that the respondents were making them to work 12 hours a day requiring physical and mental alertness. That the action of the respondent was violative of 51,54 of Factories. Act Their contention that they were made to work beyond 8 hours a day Para 3 of the judgment refers to circular dated 18-6-83 issued by Deptt. of Telecom is states that Chowkidar employed to keep a general watch over buildings at night should ordinarily be given 12 hours of duty. Hon'ble CAT held that the petitioners have failed to substantiate their plea that they have not been employed to keep general watch for building and cannot be allowed for 8 hours duty.

7. Order passed in 517/80 was challenged in Miscellaneous petition 3022/85. Said petition was dismissed confirming that the grievance could be decided in reference under Section 10 of I.D. Act.

8. Management filed affidavit of evidence of Shri V.K. Nath. His evidence remained unchallenged. The applicants have failed to adduce evidence that they were performing duties requiring physical and mental alertness and they are entitled for duty 8 hours per day. In absence of such evidence, claim of the applicants cannot be accepted. For above reasons, I record my finding in Point No. 1 in Negative.

9. In the result, award is passed as under:—

- (1) Action of the management of Telecom Training Centre, Jabalpur in taking 12 hours duties from Shri Shyamanand and other watchmen since 1965 is legal.
- (2) Relief prayed by workmen are rejected.

R. B. PATLE, Presiding Officer

नई दिल्ली, 24 दिसम्बर, 2013

का०आ० 102.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, ग्रे आइरन फाउंड्री, जबलपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या CGIT/LC/R/145/95) को प्रकाशित करती है जो केन्द्रीय सरकार को 24/12/2013 को प्राप्त हुआ था।

[सं० एल-14012/19/94-आईआर (डीयू)]

पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th December, 2013

S.O. 102.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/145/95) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of General Manager, Grey Iron Foundry, Jabalpur and their workman, which was received by the Central Government on 24.12.2013.

[No. L-14012/19/94-IR(DU)]

P.K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/145/95

Presiding Officer: Shri R.B. Patle

Shri K.R. Denial,
S/o Late Shri M.D. Denial
Through Shri B. Disalva Advocate,
18, South Civil Lines,
Jabalpur

....Workman

Versus

General Manager,
Grey Iron Foundry,
Jabalpur

.....Management

AWARD

(Passed on this 13th day of November 2013)

1. As per letter dated 4.8.95 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-14012/19/94-IR(DU). The dispute under reference relates to:

"Whether the action of the management of Grey Iron Foundry, Jabalpur (MP) in imposing punishment of compulsory retirement *w.e.f.* 8.2.94 to the workman Shri Shri K.R. Denial, S/o Late Shri M.D. Denial, Ticket No. 2967/578/PM-2 is legal and justified? IF not to what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Ist party workman filed statement of claim at Page 5/1 to 5/2. The case of workman is that he was working as Electrician in IInd party. He was served with chargesheet on 4.3.91 for allegation that he committed gross misconduct consuming alcohol. He have been habitually conducting misconduct. The charges were denied by him, enquiry was conducted. The enquiry Officer held charges were proved against him. Punishment of compulsory retirement was imposed on 8.2.94. During pendency of said disciplinary proceeding, workman was served with another chargesheet on 6.8.91. Charges against him was of misbehaviour with Medical Officer of VFJ Hospital. Said charge was denied by him. Workman was under suspension. He was compelled by Enquiry Officer to accept charges assuring that minor punishment would be imposed. The workman accepted charges. As a result, punishment of compulsory retirement was imposed against him on 8.2.94.

3. Workman submits that the findings of Enquiry Officer are perverse. Enquiry Officer did not apply his mind. He had not committed any misconduct, he was not allowed opportunity for his defence. The second enquiry and order of punishments are infructuous. On such ground, workman prays for his reinstatement with consequential benefits.

4. IInd party filed Written Statement at Page 6/1 to 6/2. IInd party contends that after issuing chargesheet, the enquiry was conducted as per CCS and Appeal Rules 1965. Full opportunity for defence was given to workman. Principles of natural justice were followed. Workman was given opportunity but he did not cross-examine witnesses. IInd party denied that the workman was given promise of minor punishment for admitting charge. He denied that the charge was admitted under any promise or pressure. The punishment doesnot suffer from illegality. The punishment of compulsory retirement was imposed against the workman.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of Grey Iron Foundry, Jabalpur (MP) in imposing punishment of compulsory retirement <i>w.e.f.</i> 8.2.94 to the workman Shri Shri K.R. Denial, S/o Late Shri M.D. Denial, Ticket No. 2967/578/PM-2 is legal?	In Affirmative
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(ii) If not, what relief the workman is entitled to?

Relief prayed by workman is rejected.

REASONS

6. As legality of enquiry was disputed by Ist party workman, my predecessor has decided preliminary issue on 11.05.2012. The enquiry conducted against workman is found legal and proper. Other question arises as to (1) whether the findings of the Enquiry Officer are perverse & (2) whether the punishment of compulsory retirement of workman is proper and legal.

7. Workman has not adduced evidence on other issues. In view of the enquiry conducted against workman is found legal, the record of the enquiry proceeding needs to be scrutinized. As per document Exhibit M-1, the charges against Ist party workman attending duties under influence of liquor. Earlier punishments were imposed in workman for consuming liquor on duty, one increment was withheld. On 26.02.1985, for consumption of liquor, he was suspended on 13.7.87, for misuse of gate pass, punishment of reduction of pay by two stages without cumulative effect was imposed on 3.8.89. Exhibit M-2 is the memorandum. Exhibit M-3 is order of appointment order. Exhibit M-4 is notice of enquiry. In Exhibit M-5, workman has admitted charge. In his cross-examination, workman has stated that he had not complained to the higher authorities about his admission obtained on promise for imposing minor punishment. The workman has admitted the charge before Enquiry Officer. Consuming liquor and attending duty in drunken condition is certainly serious misconduct. The punishment cannot be said excessive as charges were admitted by the workman. It cannot be said that findings of Enquiry Officer are perverse. The punishment of compulsory retirement is imposed after holding enquiry, no illegality is committed by IInd party therefore I record my finding in Point No. 1 in Affirmative.

8. In the result, award is passed as under:—

- (1) Action of the management of Grey Iron Foundry, Jabalpur (MP) in imposing punishment of compulsory retirement *w.e.f.* 8.2.94 to the workman Shri Shri K.R. Denial, S/o Late Shri M.D. Denial, Ticket No. 2967/578/PM-2 is proper.
- (2) Relief prayed by workman is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 24 दिसम्बर, 2013

का०आ० 103.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डाकघर, विलासपुर के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट

(संदर्भ संख्या CGIT/LC/R/103/99) को प्रकाशित करती है जो केन्द्रीय सरकार को 24/12/2013 को प्राप्त हुआ था।

[सं० एल-40012/91/97-आईआर (डीयू)]

पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th December, 2013

S.O. 103.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/103/99) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Post Office, Bilaspur and their workman, which was received by the Central Government on 24.12.2013.

[No. L-40012/91/97-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/103/99

Presiding Officer: Shri R.B. Patle

Shri Ramadhar Patel,
Ex. E.D.- Mail Peon,
Vill. & PO Pathariya,
Distt. Bilaspur (MP)

....Workman

Versus

Superintendent of Post Office,
Deptt. of Postal, Head Post Office,
Bilaspur (MP)

The Sub Divisional Inspector (Dak),
Sub Divisional Office,
Mungeli,
Distt. Bilaspur (MP)

...Management

AWARD

(Passed on this 11th day of November 2013)

1. As per letter dated 9.3.99 by the Government of India, Ministry of labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-40012/91/97-IR(DU). The dispute under reference relates to:

"Whether the action of the management of Department of Posts, at Post Office, Bilaspur in terminating the services of Shri Ramadhar Patel, Ex. E.D. Mail Peon of Sub-Post Office, Mungeli is legal and justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 3. The case of workman is that he was working in Patharia Sub Post Office for 310 days during the period 23.4.94 to 5.8.96. He had produced documents Medical Certificate, Character Certificate. His name was enrolled in Employment Exchange. As such fulfilling eligibility for appointment as ED Mail Peon. There were no complaints against him. That amount of Rs. 10/- was deducted from his salary towards family benefit. He was repeatedly asked to submit application for its withdrawal. At the time of discontinuing his services, he was advised by the Inspector not to complaint to anybody. Therefor he was waiting for two months for his absorption at some other place. That his services are illegally terminated and junior person is appointed in his place.

3. IInd party filed Written Statement at Page 5/1 to 5/3. IInd party submits that Sub Post Office, Patharia was opened from 5.6.76. The establishment was consisting of one S.P.M, one E.D. Mail Peon and one E.D. Mail Carrier. That one Shri Mahetru was working as ED Mail peon Patharia w.e.f. 5.7.76. He was put off on 20.1.94. In order to manage extra work of ED Mail Peon, workman was temporarily engaged in place of Mahetru from 23.4.94. That workman was informed that he was temporarily engaged in place of Shri Mahetru and can be removed without prior information. That Mahetru was reinstated from 2.8.96. Thus temporary arrangement was discontinued. Workman was discontinued from work. That workman was purely engaged on temporary basis and staff gap arrangement with understanding that his services would be terminated at any time. On such ground, IInd party prays for rejection of the claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as follows:—

- | | |
|--|---------------------|
| (i) Whether the action of the management of Department of Posts, at Post Office, Bilaspur in terminating the services of Shri Ramadhar Patel, Ex. E.D. Mail Peon of Sub-Post Office, Mungeli is justified? | In Negative |
| (ii) If not, what relief of the workman is entitled to? | As per final order. |

REASONS

5. Workman is challenging termination of his services as E.D. Peon for violation of Section 25-F of I.D. Act, that he was working continuously for 310 days during 23.4.94 to 5.8.96. IInd party submits that workman was engaged on temporary basis as services of Shri Mahetru ED Mail Peon

were put off on 20-1-1994. Ist party workman was engaged on temporary basis, he cannot claim regularization. The written statement filed by IInd party is silent about completion of 240 days continous service by workman preceding discontinuation of the workman. The workman has not adduced evidence. His evidence is closed on 6.7.07. Management did not adduce any evidence. From pleading on record, it is clear that workman had completed 360 days continous service prior to his termination, workman was temporarily employed. However he had completed 240 days continuous service, therefore workman is covered under Section 25-F of I.D. Act. He is entitled to protection of Section 25-F of I.D. Act. The pleadings of IInd party are silent about giving notice of termination or payment of retrenchment compensation to workman. Pleadings in Written Statement itself are clear that services of workman are terminated in violation of Section 25-F of I.D. Act.

6. Learned counsel for IInd party Shri P. Namdeo was unable to explain at time of argument about compliance of Section 25-F of I.D. Act when workman was working with IInd party from 20.1.94 to 5.8.96. For reasons discussed above, it is clear that services of Ist party workman are illegally terminated in violation of Section 25-F. Therefore I record my finding on Point No. 1 in Negative.

7. Point No. 2—In view of my finding in Point No. 1 that services of workman are terminated in violation of Section 25-F of I.D. Act, question arises to what relief the workman is entitled. Workman has not adduced evidence. IInd party also not adduced any evidence. It is not known whether workman is employed some where. Workman was working with IInd party for 300 days prior to his termination, he was not paid retrenchment compensation, no notice was paid to him, termination of service is in violation of Section 25-F of I.D. Act. Workman is not entitled to reinstatement. The reasonable compensation would be appropriate. Considering the facts and circumstances, compensation Rs. 20,000/- would be proper. Accordingly I record my finding in Point No. 2.

8. In the result, award is passed as under:—

- (1) Action of the management of Department of Posts, at Post Office, Bilaspur in terminating the services of Shri Ramadhar Patel, Ex. E.D. Mail Peon of Sub-Post Office, Mungeli is illegal. For violation of Section 25-F of I.D. Act.
- (2) IInd party is directed to pay compensation Rs. 20,000/- be paid within 30 days from the date of award.

Amount as per above order shall be paid to workman within 30 days. In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

R.B. PATLE, Presiding Officer

नई दिल्ली, 24 दिसम्बर, 2013

का०आ० 104.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, बी०एस०एन०एल० के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या CGIT/LC/R/148/2001) को प्रकाशित करती है जो केन्द्रीय सरकार को 24-12-2013 को प्राप्त हुआ था।

[सं० एल-40012/172/2001-आईआर (डीयू)]

पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th December, 2013

S.O. 104.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/148/2001) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of General Manager, BSNL and their workman, which was received by the Central Government on 24-12-2013.

[No. L-40012/172/2001-IR(DU)]

P.K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/148/2001

PRESIDING OFFICER: SHRI R.B. PATLE

Shri Bhoopnarayan Pandey,
Ex-worker of Telephone Exchange,
Vill. Shakti Nagar Telephone Exchange,
P.O. Sakti, Distt. Janjgir,
Champa (Chhattisgarh)

....Workman

Versus

General Manager,
BSNL, Telephone Exchange,
Bilaspur (Chhattisgarh).

....Management

AWARD

(Passed on this 6th day of August, 2013)

1. As per letter dated 10.9.2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-40012/172/2001-IR (DU). The dispute under reference relates to:

" Whether the demand of Shri Bhoopnarayan Pandey for reinstatement as Guard in Telephone Deptt. *w.e.f.*

December 2000 with full back wages, etc. at par with regular employees is justified? If so, to what relief he is entitled?"

2. Ist party workman is claiming for reinstatement in service as Guard from management in the dispute under reference. Even after issuing notices, the workman did not participate in the proceeding, no statement of claim is filed. Ist Party is proceeded exparte on 27.03.2006.

3. IInd party management also not filed Written Statement. From conduct of the parties, it is clear that the parties are not pursuing or participating in the dispute.

4. In the result, award is passed as under:—

"Reference is disposed off as No. Dispute Award."

R. B. PATLE, Presiding Officer

नई दिल्ली, 24 दिसम्बर, 2013

का०आ० 105.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, केन्द्रीय फार्म मशीनरी एवं प्रशिक्षण संस्थान के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या CGIT/LC/R/151/97) को प्रकाशित करती है जो केन्द्रीय सरकार को 24/12/2013 को प्राप्त हुआ था।

[सं एल-42012/Nil/96-आईआर (डीयू)]

पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th December, 2013

S.O. 105.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/151/97) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Director, Central Farm Machinery Training & Training Institute and their workman, which was received by the Central Government on 24/12/2013.

[No. L-42012/Nil/96-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/151/97

PRESIDING OFFICER: SHRI R.B. PATLE

Smt. Chote Bai,
W/o Kalsuram
Behind Rly station,

Godi Mohalla,
Budni, Distt. Sehore (MP)

...Workman

Versus

The Director,
Central Farm Machinery Training
and Testing Institute, Tractor Nagar,
P.O. Budni, Distt. Sehore (MP)

... Management

AWARD

(Passed on this 2nd day of August, 2013)

1. As per letter dated 30.5.97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-42012/Nil/96-IR(DU). The dispute under reference relates to:

"Whether the action of the management of Central Farm Machinery Training and Test Institute, Budni in terminating the services of Smt. Chote Bai W/o Kalsuram is legal and justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party workman filed Statement of claim at Page 5. The case of Ist party workman is that she was employed by the IInd party on daily wage casual labour in 1987. Since his initial engagement, she was continuously working the IInd party till 1994. That she had worked for 240 days during each of the calendar year and even 12 months preceding his retrenchment from service. Though the workman continuous rendered service, she was not regularized, permanent status was not given to him with ulterior motive. The management of IInd party adopted pick and choose policy. That the management had regularized services of 24 employees out of which three were over aged namely Shri Gulab, Shivrulal and Narmada Prasad. Their services were regularized. That IInd party deliberately discontinued her services to accommodate those workman. Discontinuation of workman from service is illegal. Provisions of Section 25-F, G & H of I.D. Act were not complied. On such grounds, workman prays for reinstatement with consequential benefits.

3. IInd party management even after receiving notice failed to appear. IInd party was proceeded exparte as per order dated 15.6.07.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- (i) Whether the Action of the management of Central Farm Machinery Training and Test Institute, Budni in terminating the services of Smt. Chote Bai W/o Kalsuram is legal? In Negative.

(ii) If not, what relief the workman is entitled to?"

As per final order.

अधिकरण श्रम न्यायालय, चण्डीगढ़ के पंचाट (681/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 26.12.2013 को प्राप्त हुआ था।

REASONS

5. Ist party workman is challenging termination of services. The workman has filed affidavit of her evidence. The workman has stated that she was engaged by IInd party on daily wages in 1987 after holding interview. That she worked for more than 240 days during each of the year 1987 to 1994. Her services were not regularized as per the Regularisation Scheme for casual labours of Govt. of India. That other overaged employees Gulab, Shival and Narmada Prasad and junior employees Hiralal, Ashok Kumar and Suresh were regularized from July 1994. The services of Ist party workman were illegally terminated. The evidence of workman remained unchallenged. IInd party has not participated in the reference proceeding. IInd party is proceeded exparte. Considering unchallenged evidence of workman, I donot find reason to discard his evidence. From evidence on record, it is established that the services of workman are terminated in violation of Section 25-F of I.D. Act as such illegal. For above reasons, I record my finding in Point No. 1 in Negative.

6. Point No. 2—question arises as to what relief the workman is entitled? Whether the workman is entitled for reinstatement with back wages? The unchallenged evidence of workman shows he is out of employment from 1994 for about 19 years. Is party workman was working as daily wage employee. His reinstatement would not be justified. Considered the period of his working from 1987 to 1994, in my considered view, compensation Rs. 60,000/- would be proper. Accordingly I hold and record my finding on Point No. 2.

7. In the result, award is passed as under:—

- (1) Action of the management of Central Farm Machinery Training and Test Institute, Budni in terminating the services of Smt. Chote Bai W/o Kalsuram is illegal.
- (2) IInd party is directed to pay compensation Rs. 60,000 to workman.

Amount as per above order shall be paid to workman within 30 days. In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

R.B. PATLE, Presiding Officer

नई दिल्ली, 26 दिसम्बर, 2013

का०आ० 106.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय जीवन बीमा निगम के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

[सं० एल-17012/11/2002-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 26th December, 2013

S.O. 106.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 681/2005) of the Central Government Industrial Tribunal-Cum-Labour Court-II, Chandigarh as shown in the Annexure, in the Industrial Dispute between the management of LIC of India and their workmen, received by the Central Government on 26.12.2013.

[No. L-17012/11/2002-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

PRESENT: SHRI KEWAL KRISHAN, Presiding Officer

Case No. I.D. No. 681/2005

Registered on 25.8.2005

Sh. Moti Chand,
C/o Sh. R.K. Sharma, H.No. 510,
Sector 15A, Chandigarh.

...Petitioner

Versus

The Senior Divisional Manager,
LIC of India,
Jeevan Prakash Building Sector 17B,
Chandigarh.

...Respondents

APPEARANCES:

For the workman Sh. Ravi Kant Sharma Adv.

For the Management Sh. P.K. Longia Adv.

AWARD

Passed on 8.11.2013

Central Government *vide* Notification No. L-17012/11/2002-IR(B-II) dated 11.10.2002, by exercising its powers under section 10 Sub-section (1) Clause (d) and Sub Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether the action of the management of LIC of India in terminating the services of Sh. Moti Chand, Ex-Caretaker *w.e.f.* 7.8.2001 without following the provisions of Industrial Disputes Act, 1947 is legal and just? If not, what relief the concerned workman is entitled and from which date?"

In response to the notice, the workman appeared and submitted statement of claim pleading that he is a graduate and joined as 'Care-taker' with the respondent management *vide* appointment letter dated 12.6.1989. He was initially posted at LIC Guest House in House No. 59, Sector 8, Chandigarh and after a period of 10 years, he was transferred to LIC Guest House at house No. 326, Sector 15D, Chandigarh on 28.5.1999. He continued to work as care-taker in the Guest House from 1999 to 7.8.2001 without any break in service. He was initially appointed on consolidated salary of Rs. 700 per month which was later on enhanced to Rs. 2000 per month in 1999. The said salary is much less than the salary payable for the post of care-taker. He was not given any increment for the period he served with the respondent. In order to show that workman was working on contract, the respondent management issued a fresh appointment letter dated 1.6.2000 which is a camouflage to circumvent the law.

It is pleaded that in order to adjust Mr. Sanjay, a person known to Senior Divisional Manager, LIC, Chandigarh, the workman was issued a show cause notice dated 31.5.2000 to get rid of him. He was transferred to Sector 15D, Guest House and in his place Surinder Singh Rana was appointed as Care-taker in Sector 8, Guest House and said Surinder Singh is close to Senior Divisional Manager. Now in order to accommodate Mr. Sanjay, a brother of Surinder Kumar, said show cause notice was issued to him on 31.5.2000 and ultimately his services were terminated. That termination of his services are illegal and he is entitled to be taken back in service with full wages.

The respondent management filed written reply denying the relationship of employer and employee and pleaded that the petitioner was simply a contractor to whom contract of attending the LIC Guest House, Sector 8, Chandigarh was given initially for a period of 12 months on monthly payment of Rs. 700 *vide* letter dated 12.6.1989. His contract was extended from time to time and he was granted contract of Guest House, Sector 15, Chandigarh. The contract was lastly extended on 1.6.2000 for a period of 12 months on payment of Rs. 2000 per month. He was not granted further extension of contract after the expiry of the period of contract which expired on 31.5.2001. That the petitioner was given contract from time to time which is as follow:-

From 12.6.1989 to 30.6.1990	Rs. 700/-
From 1.7.1990 to 31.7.1991	Rs. 850/-
From 1.8.1991 to 30.11.1992	Rs. 900/-
From 1.12.1992 to 31.12.1993	Rs. 1100/-
From 1.1.1994 to 31.10.1995	Rs. 1200/-
From 1.11.1995 to 31.3.1997	Rs. 1400/-
From 1.4.1997 to 30.11.1998	Rs. 1600/-
From 1.12.1998 to 31.5.2001	Rs. 2000/-

That the petitioner is not an employee of the LIC, it is further pleaded that the inspection of the Guest House was conducted by a Committee on 27.5.2000 and various irregularities committed by the petitioner were found and consequently a show cause notice was issued to him on 31.5.2000 and after obtaining the reply, he was warned to be careful in future. Wife and children of the petitioner were found sleeping in the Guest House, besides other irregularities. His explanation was sought and finding the same not satisfactory, his contract was not extended from 31.5.2001. That Surinder Singh Rana and Sanjay were granted contracts on the basis of their merit.

In the rejoinder workman pleaded that he was appointed *vide* letter dated 12.6.1989 and by mentioning the word 'contract', the management cannot change the nomenclature of the letter which in fact is an appointment letter. The basic pay of the care-taker was Rs. 3120-35 along with other allowances but he was paid much less. That he is an employee of the management.

Parties led their evidence. In support of its case, the workman appeared in the witness box and filed his affidavit reiterating the case as set out in the claim statement. He also examined Z.S. Dhankar who filed his affidavit and deposed that workman was initially given work of care-taker on daily wage basis which were paid at the end of every month. He further deposed about the functioning of the care-taker and the Guest House.

On the other hand the management examined Smt. Manju Jain who filed her affidavit reiterating the case as said out in the written statement. I have heard learned counsel for the parties and perused the file.

It was vehemently contended by the learned counsel for the workman that the workman was appointed as care-taker in the Guest House of the management where he joined on 12.6.1989 and his services were arbitrarily terminated on 31.5.2000 which is illegal. He further contended that the workman was paid at DC rates and even he was transferred from Sector 8, Guest House; to Sector 15D Guest House and even his casual leave was sanctioned by the Department and these facts prove that he was an employee of the management.

It was further contended that the management had intentionally used the word 'contract' in the appointment letter dated 12.6.1989 Exhibit W1 to change the nomenclature of the appointment letter and in fact the said letter is an appointment letter and since the workman continuously worked for the management, his services cannot be terminated without complying the provisions of the Act.

On the other hand it was contended by the learned counsel for the management that the petitioner was given only contract for attending the Guest House of the management situated at Chandigarh *vide* letter dated 12.6.1989 and the said contract was renewed from time to

time and lastly the contract was issued on 1.6.2000 *i.e.* Exhibit W2 and argued at length that during the inspection of the Guest House on 27.5.2000 various irregularities were found regarding which show cause notice was served on the workman who filed reply and finding the same not satisfactory his contract was not extended from 31.5.2001 and since he was not an employee of the management, the present reference is not maintainable.

I have considered the respective contentions.

The main question which needs determination in the present proceedings is whether there is any relationship of an employer and employee between the management and the workman. It is admitted that the workman was given work for attending the LIC Guest House, Chandigarh *vide* letter dated 12.6.1989 Exhibit W1. Now according to the workman, this is an appointment letter. But perusal of the said letter shows that the management only awarded to him the contract for attending the Guest House for a period of 12 months on consolidated amount of Rs. 700 per month and it was further mentioned that he would attend the Guest House at all times and was to make arrangements to depute some other dependable person to attend the Guest House in his absence. He applied for leaves as is evident from the documents M2 to M15 and every time he deputed some other person in his place to do the duty. Thus, the workman deputed some other person in his place to attend the work of the Guest House when he proceeded on leave and in the circumstances, if his leave was sanctioned by the management the same do not prove that the workman was appointed as care-taker of the Guest House. It is not disputed there are certain rules and regulations for appointing a care-taker in the Guest House and there is no evidence on the file that the same were ever followed while making any appointment of the workman as care-taker in the Guest House. A bare perusal of the letter dated 12.6.1989 Exhibit W1 and dated 1.6.2000 *i.e.* M22 leaves no doubt that there was only a contract to attend the Guest House on a consolidated pay which varied from time to time and it cannot be said that he was paid salary at DC rates argued by the learned counsel. Again there is nothing on the file that he was appointed as a daily wage.

It may also be added that he was not employed at any point of time even on contract basis and he was simply given a contract from time to time for attending the Guest House. When he was not employed by the management, it cannot be said that there is any relationship of employer and employee between the parties, simply on account of the fact that he was paid certain amount at the end of the month or his leave was sanctioned. Since he was given contract to look after the Guest House in Section 15, Chandigarh, it cannot be said that he was transferred from Guest House situated in Sector 8, Chandigarh.

Though, as stated above, a lengthy argument was raised that the contract was not renewed after finding

irregularities in the work of the workman, the same is not required to be gone into as this Court is only to see whether there is any relationship of employer and employee between the parties which is not established on the file.

Since no relationship of employer and employee is proved on the file between the parties it cannot be said that his services were terminated by the management *w.e.f.* 7.8.2001 and he is not entitled to any relief and the reference is answered against him. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 26 दिसम्बर, 2013

कांआ 107.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण श्रम न्यायालय चण्डीगढ़ के पंचाट (41/2004) प्रकाशित करती है जो केन्द्रीय सरकार को 26.12.2013 को प्राप्त हुआ था।

[सं० एल-12012/64/2004-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 26th December, 2013

S.O. 107.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 41/2004) of the Central Government Industrial Tribunal-Cum-Labour Court-II, Chandigarh as shown in the Annexure, in the Industrial Dispute between the management of Bank of India and their workmen, received by the Central Government on 26.12.2013.

[No. L-12012/64/2004-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

PRESENT : SRI KEWAL KRISHAN, Presiding Officer

Case No. I.D. 41/2004

Registered on 7.12.2004

Shri Brij Raj Singh, S/o Sh. Balwant Singh, R/o Village Khanpur, Post Office Gole Gujral, Tehsil and District Jammu, Jammu.
...Petitioner

Versus

The General Manager, Bank of India, Head Office, Express Towers, Nariman Point, Mumbai.
...Respondent

APPEARANCES:

For the workman

None

For the Management

Sh. Rajan Lohan Advocate.

AWARD

(Passed on 22-10-2013)

Central Government *vide* Notification No. L-12012/64/2004-IR(B-II) dated 28.6.2004, by exercising its powers under Section 10 Sub-Section (1) Clause (d) and Sub-Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether the action of the management of Bank of India, Satwari Branch, Jammu in terminating the services of Sh. Brij Raj Singh, Sub-Staff S/o Sh. Balwant Singh *w.e.f.* 16.8.2002 was just, fair and legal? If not, what relief he is entitled to and from which date?"

On receiving the reference notice was issued to the workman as well as to the management.

The workman submitted statement of claim pleading that considering satisfactory his work and conduct, he was sent by the management to appear in a clerical examination at Amritsar to be held on 3.10.1993 from 2 P.M. to 4 P.M. and reached back Jammu on 4.10.1993. Due to exertion, he fell sick and was admitted in Government Medical College Hospital, Jammu on 5.10.1993. On being checked by Dr. Dinesh Gupta, workman was found having acute Iridocyclitis right eye and was advised treatment and rest for two weeks *vide* MRD No. 666 dated 5.10.1993. He sent an application by registered post along with medical certificate for medical leave for 15 days. But instead of sanctioning the leave, the management informed him *vide* letter dated 22.11.1993 that no leave was due towards him and his absence is being treated as unauthorized absence. He was further directed to produce medical certificate. Thereafter he approached respondent No. 3 number of times to join his duties but was not allowed. He was again served with the letter dated 5.1.1994 whereby asked to join his duties failing which his services were to be terminated as per Clause 17 of the Bipartite Settlement. He sent reply to the said letter mentioning therein all the facts and requested to allow him to join his duty *vide* his letter dated 31.1.1994. That he remained under mental stress and torture and was confined to bed due to the acts and threats of the management. That his services were terminated by the management dated 8.2.1994.

He filed Writ Petition No. 514 of 1995 titled Brij Raj Singh Vs. Bank of India which was allowed by the Hon'ble High Court *vide* order dated 13.5.1999 and he was ordered to be reinstated. He joined his duty on 15.5.1999, but the management challenged the said judgement by filing Letters Patent Appeal (SW) No. 220 of 1999 titled as Bank of India Vs. Brij Raj Singh and the same was allowed on the ground that there were disputed questions as to the fact whether workman was gainfully employed or whether he made any effort to join his duty. His services were again discontinued *vide* dated 16.8.2002.

He remained in the service of the bank for more than three years and his services were terminated without conducting any inquiry and as such he be treated in service.

The management filed written reply pleading that workman was awarded punishment of stoppage of three annual increments for misappropriating funds of the bank. That the workman applied for 15 days' sick leave from 5.10.1993 but did not bother to join duty till 22.11.1993. He was advised to join the duty *vide* letter dated 22.11.1993 and when he failed, he was asked to join the duty *vide* order dated 5.1.1994 within 30 days and he failed to comply with the same and in terms of Clause 17 of Bipartite Settlement dated 10.4.1989 his services were terminated *vide* order dated 8.2.1994 which is legal and valid.

It is further pleaded that during the period of reinstatement from 14.5.1999 to 16.8.2002 in consequence of the decision of the Hon'ble High Court the workman remained absent from the following period:—

Sl. No.	Months	Number of days
1.	03 Feb. to 09 April, 2000	66
2.	12 April to 16 April, 2000	04
3.	24 April to 13 October, 2000	173
4.	15 October to 16 October, 2000	02
5.	19 October to 28 November, 2000	41
6.	30 November 2000 to 31 May, 2002	539
		825

and accordingly he was awarded punishment. That the services of the workman have been rightly terminated.

In support of his case workman appeared in the witness-box and filed his affidavit reiterating his case as stated in the claim petition. He also filed documents Annexure P1 to P11. He examined Navdeep Singh who filed his affidavit deposing that Brij Raj Singh approached the bank in October, 1993 to join his duties but the Manager did not allow him to do so. He also examined M.K. Dhar who is a Registrar of Medical College, Jammu and placed on record photocopy of Medical report dated 5.10.1993.

On the other hand, management examined Paramjit Singh Walia who filed his affidavit reiterating the case of the management as stated in the written statement.

Parties filed written arguments.

My learned predecessor reserved the case for orders and later on, on 5.7.2013, found that orders of the Bank and Hon'ble High Court are not legible and ordered to issue notice to the parties.

Workman appeared on 30.8.2013. On that day notice was ordered to be issued to management and its counsel by registered post. The counsel of the management appeared later on and noted the next date *i.e.* 22.10.2013. Notice was also issued to the management for 22.10.2013 *i.e.* for today, but none appeared on behalf of the management and the management was proceeded against *ex parte vide* separate order of today.

I have heard the workman and perused the file as well as the written arguments submitted by the parties earlier. The workman submitted that he fell sick on 5.10.1993 and he applied for medical leave for 15 days on the recommendation of Dr. Dinesh Gupta who issued the certificate Annexure P2 and thereafter he was not allowed to join the duty by the Branch Manager and his services were illegally terminated *vide* order dated 8.2.1994. He successfully challenged the said order before the Hon'ble High Court of Jammu and Kashmir by filing a Writ Petition No. 514/95 which was allowed *vide* order dated 13.5.1999. However the Letters Patent Appeal (SW) No. 220 of 1999 was filed by the bank which was allowed by the Hon'ble High Court as is evident from the Annexure P 10 on the ground that there was disputed question whether the workman ever tried to join his duty and whether he remained gainfully employed during the period he was out of service, according to workman he made several efforts to join his duties and was not employed any where and therefore the order of termination dated 8.2.1994 and dated 30.5.2002 are not legal and valid. I have considered the submissions made by the workman. It is disputed that there is Bipartite Settlement dated 10.4.1989 between the workmen and the management and Clause 17 reads as follows:—

"when an employee absents himself from work for a period of 90 or more consecutive days, without submitting any application for leave or for its extension or without any leave to his credit or beyond period of leave sanctioned originally or when there is an satisfactory evidence that the has taken an employment in India or when the management is reasonably satisfied that he has no extension of joining duties, the management may at any time thereafter give a notice to the employee at his last known address calling upon him to report for duty within 30 days of the date of notice, stating *inter alia* the grounds for coming to the conclusion that the employee has no intention of joining duties and furnishing necessary evidence, where available. Unless the employee reports for duty within 30 days satisfying the management that he has not taken up another employment or avocation and that he has no intention of not joining duties. The employee will be deemed to have voluntarily retired from the bank's service on the expiry of the said notice. In the event of the employee submitting a satisfactory reply, he shall be permitted to report for duty thereafter within 30 days from the date of the expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rules of service."

This Clause has been held to be legal and valid by the Division Bench in the case of the present workman itself in LPA No. 220/1999. Thus an employee who absent himself for period of 90 days or more, the management can terminate his services after giving him a notice calling him

to report within 30 days of the date of notice. Now, the case of the workman himself is that he fell sick and he applied for 15 days' leave as per letter dated 5.10.1993 Annexure P3 on the file. It is further pleaded by the workman that thereafter he approached the Branch Manager to join his duties time and again but was not allowed to join the duties. It may be added that the Branch Manager *vide* letter dated 22.11.1993. Annexure P4 informed him that on leave was due to him and he may send the medical certificate and otherwise resume the duty immediately. Thus the Branch Manager asked him to join the duties *vide* letter dated 22.11.1993. In the circumstances it cannot be said that he was not allowed to join the duties by the management on the expiry of 15 days' time from 5.10.1993. Again the management issued a noticed dated 5.1.1994 Annexure P5, serving notice on him to join duties within 30 days failing which the action was to be taken again him under Clause 17 of the Bipartite Settlement. But instead of joining the duties, he wrote a letter dated 31.1.1994 and himself placed on file its copy Annexure P 6 mentioning therein some excuses and praying that his services be not terminated. This very letter dated 31.1.1994 further falsifies the case of the workman that he ever tried to join his duty and even did not bother to attend the duty even after service notice dated 5.1.1994. In view of the Clause 17 of the Bipartite Settlement as reproduced above, the management was competent to terminate his services who passed the order dated 8.2.1994 Annexure P7 which is legal and valid and in the circumstances, it cannot be said that the absence of the workman was not willful.

Thus it is clear the management rightly passed the order dated 8.2.1994 as well as 16.8.2002 and the workman is not entitled to any relief. The reference is answered against the workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 26 दिसम्बर, 2103

का०आ० 108.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आयुक्त, दिल्ली नगर निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं-1 के पंचाट (संदर्भ संख्या 203/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

(सं० एल-42012/75/2012-आईआर(डीयू)

पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 26th December, 2013

S.O. 108.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the award (Ref. No. 203/2012) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Commissioner, MCD and their workman, which was received by the Central Government on 26/12/13.

[No. L-42012/75/2012-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL No. 1, DELHI**

I.D. No. 203/2012

The General Secretary,
Nagar Nigam Karamchari Sangh,
Delhi Pradesh, P-2/624, Sultanpuri,
Delhi.

...Workman

Versus

The Commissioner,
Municipal Corporation of Delhi
Town Hall, Chandni Chowk,
Delhi-110006.

...Management

AWARD

One Shri Jai Kavar was working as safai karamchari with Municipal Corporation of Delhi (hereinafter referred to as the Corporation). He died in harness. His wife, namely, Smt. Bala applied for employment on compassionate grounds. Since no vacancy was available for her appointment, her application for compassionate appointment was declined. However, she was given appointment on daily wage basis to help her on humanitarian grounds. Pursuant to its policy of regularization, the Corporation regularized services of Smt. Bala *vide* order dated 21.05.2007 with effect from 01.04.2006. Smt. Bala accepted offer of the appointment on regular basis and joined services of the Corporation. Subsequently, she approached the Nagar Nigam Karamchari Sangh (in short the Sangh) seeking regularization of her services from initial date of her engagement on casual basis. The Sangh raised an industrial dispute before the Conciliation Officer. Since the Corporation contested the claim, conciliation proceedings failed. One consideration of failure report, submitted by the Conciliation officer, the appropriate Government referred the dispute to this Tribunal of adjudication, *vide* order No. L-42012/75/2012-IR(DU), New Delhi dated 26.11.2012, with following terms of reference:

"Whether action of the management of Municipal Corporation of Delhi (MCD) in not granting regular pay scale and post to Smt. Bala, w/o

late Shri Jai Kavar, 'Safai Karamchari' from the date, she was appointed on compassionate grounds, *i.e.* 23.05.2002, against the permanent vacancy/post of her deceased husband, late Shri Jai Kavar, is justified or not? If not, what relief the workman, Smt. Bala, w/o late Shri Jai Kavar is entitled to and from which date?"

2. In the reference order, the appropriate Government commanded the parties to the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions, so, given, Smt. Bala opted not to file her claim statement with the Tribunal.

3. Notice was sent to Smt. Bala by registered post on 27.12.2012, calling upon her to file claim statement before the Tribunal on or before 17.01.2013. This notice was sent to her through the union, located at P-2/624, Sultanpuri, Delhi, the address provided by the appropriate Government in order of reference. Neither the claimant nor the union responded to the notice, so sent.

4. Since none came forward on behalf of the claimant to file her claim statement, fresh notice was sent to her by registered post on 22.01.2013 calling upon her to file claim statement before the Tribunal on 11.02.2013. Notice was again transmitted to the claimant by registered post on 12.02.2013 and 12.03.2013 asking her to file her claim statement on or before 08.03.2013 and 09.04.2013 respectively. Lastly, notice dated 10.04.2013 was sent by registered post commanding the claimant to file her claim statement before the Tribunal on or before 24.05.2013. Neither the postal articles, referred above, were received back nor was it observed by the Tribunal that postal services remained affected in the periode, referred above. Therefore, every presumption lies in favour of the fact that the above notices were served upon the claimant. Despite service of these notices, claimant opted to abstain away from the proceedings. No claim statement was filed on her behalf.

5. Since onus of the question referred for adjudication was on the Corporation, it was called upon to file its response to the reference order. In its response to the reference order, Corporation projects that no notice of demand was served on it prior to raising the dispute, hence it has not acquired status of an industrial dispute. Corporation further pleads that for want of espousal the dispute has not acquired character of an industrial dispute. Claimant is not entitled to get regularization in service of the Corporation with effect from 23.05.2002, the date when she was engaged as safai karamchari on casual basis. She was not eligible to be appointed in the service of the Corporation on compassionate grounds for want of vacant post. Since there was no post available for her, she cannot claim appointment on compassionate grounds as a matter of right. However, she was given appointment on daily

wage basis to accord her immediate help on humanitarian grounds. In accordance with its policy, the Corporation took steps for regularization of services of such casual employees in a phased manner. The employees appointed on humanitarian grounds from 01.04.2002 to 31.03.2003 were regularized with effect from 01.04.2006. Since she was engaged on 23.05.2002, claimant was regularized with effect from 01.04.2006 vide office order dated 21.05.2007. She is not entitled for regularization of her services with effect from 23.05.2002. Reference order may be answered in its favour, pleads the Corporation.

6. Arguments were heard at the bar. None came forward on behalf of the claimant to advance arguments. Shri Umesh Gupta, authorized representative, raised submissions on behalf of the Corporation. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My finding on issues involved in the controversy are as follows:

7. Corporation contests the dispute on the count that no notice of demand was served on it prior to raising a dispute before the Conciliation Officer. These facts also remained uncontroverted. The object of the Industrial Disputes Act, 1947 (in the short the Act) is to protect workman against victimization by the employer and ensure termination of industrial dispute in a peaceful manner. The Act, however, does not provide for any set of social and economic principles for adjustment of conflicting interests. Such norms have been evolved and devised by industrial adjudication, keeping in view the social and economic conditions, the needs of the workmen, the requirement of the industry, social justice, relative interests of the parties and common good. There norms have given rights to the industrial employees what may be called industrial rights, as such rights may not be available at common law. Disputes as to the conditions of employment can be resolved by resorting to a technique known as collective bargaining. This tool is resorted to between as employer or group or employers and a bonafide labour union. Policy behind this is to protect workmen as a class against unfair labour practices. What imparts to the dispute of a workman the character of an "industrial dispute" is that it affects the right of the workmen as a class.

8. An industrial dispute comes into existence when the employer and the workman are at variance and the dispute/difference is connected with the employment or non-employment, terms of employment or with conditions of labour. In other words, dispute or difference arises when a demand is made by the workman on the employer and it is rejected by him and vice versa. In *Sindhu Resettlement Corporation Ltd.* (1968(1) LLJ 834), the Apex Court has held that mere demand, asking the appropriate Government to refer a dispute for adjudication, without being raised by the workmen with their employer, regarding such demand, cannot become an industrial dispute. Hence, an industrial

dispute cannot be said to exist until and unless a demand is made by the workman or workmen on the employer and it has been rejected by him. In *Fedders Lloyd Corporation Pvt. Ltd.* (170 Lab. I.C. 421), High Court of Delhi went a step ahead and held that "....demand by the workman must be raised first on the management and rejected by it, before an industrial dispute can be said to arise and exist and that the making of such a demand to the Conciliation Officer and its communication by him to the management, who rejected the demand, is not sufficient to constitute an industrial dispute."

9. The above decision was followed by Orissa High Court in *Orissa Industries Pvt. Ltd.* (1976 Lab. I.C. 285) and Himachal Pradesh High Court in *Village Paper Pvt. Ltd.* (1993 Lab. I.C. 99). However, the Apex Court in *Bombay Union of Journalists* [1961 (2) LLJ 436] had ruled that an industrial dispute must be in existence or apprehended on the date of reference. If, therefore, a demand has been made by the workman and it has been rejected by the employer before the date of reference, whether direct or through the Conciliation Officer, it would constitute an industrial dispute. In *Shambhunath Goyal* [1978(1)LLJ484], the Apex Court appreciated facts that the workman had not made a formal demand for his reinstatement in service. However, he had contested his dismissal before the Enquiry Officer and claimed reinstatement. Against the findings of the Enquiry Officer, he preferred an appeal to the Appellate Authority, claiming reinstatement on the ground that his dismissal was bad in law. Then again, he claimed reinstatement before the Conciliation Officer in the course of conciliation proceedings, which was contested by the employer. Appreciating all these facts, the Apex court inferred that there was impeccable evidence that the workman had persistently demanded reinstatement, rejection of which brought an industrial dispute into existence.

10. In *New Delhi Tailor Mazdoor Union* [1979 (39) FLT 195], High Court of Delhi noted that *Shambunath Goyal* had not overruled *Sindhu Resettlement Pvt. Ltd.* But it had distinguished it on facts. It was also pointed out that division of three Judges bench in *Sindhu Resettlement Pvt. Ltd.* could not have been overruled by two Judge bench in *Shambunath Goyal*. The High Court concluded that decision in *Sindhu Resettlement Pvt. Ltd.*, in case of any conflict between the two decisions, must prevail. The High Court held that making of the demand by the workman on the management was sine qua non for giving rise to an industrial dispute.

11. The High Court of Madras in *Management of Needle Industries* [1986 (1) LLJ 405], has held that dispute or difference between management and the workman, automatically arises when the workman is dismissed from service. His dismissal per se creates a dispute or difference between the management and the workman. The Court further observed that "it is nowhere stipulated in the Act,

particular in section 2(k), that existence of the dispute as such is not enough but then there should be a demand by the workman on the management to give rise to an industrial dispute". However, this decision appears to be inconsistent with the ratio of decision in *Bombay Union of Journalists* (supra) and *Sindhu Resettlement* (supra). No doubt, for existence of an industrial dispute, there should be a demand by workman and refusal to grant it by the management. However, a demand should be raised, cannot be a legal notion of fixity and rigidity. Grievances of the workman and demand for its redressal must be communicated to the management. Means and mechanism of the communication adopted are not matters of much significance, so long as demand is that of the workman and it reaches the management. Reference can be made to the precedent in *Ram Krishna Mills Coimbatore Ltd.* [1984(2) LLJ 259].

12. The Act nowhere contemplates that the industrial dispute can come into existence in any particular, specific or prescribed manner nor there is any particular or prescribed manner in which refusal should be communicated. For an industrial dispute to come into existence, written claim is not sine qua non. To read into the definition, requirement of written demand for bringing an industrial dispute into existence would tantamount to rewriting the section, announced the Apex Court in *Shambunath Goyal* (supra). In other words, oral demand and its rejection will as much bring into existence an industrial dispute, as written one. If facts and circumstances of the case show that the workman had been making a demand, which the management had been refusing to grant, it can be said that there was an industrial dispute between the parties.

13. Since the claimant had not come forward to project that demand notice was served on the Corporation, under these circumstances, stand taken by the Corporation is to be believed. The Corporation projects that no notice of demand was served on it, before industrial dispute was raised before the Conciliation Officer. Thus, it is emerging over the record that it has not been established that demand was raised on the Corporation, which was rejected by it and as such, dispute has not acquired status of an industrial dispute.

14. The Corporation for further argues that the dispute has not acquired status of an industrial dispute for want of espousal of the claim by the union or considerable number of the workmen in its establishment. For an answer to this proposition, definition of the term 'industrial dispute' is to be construed. Section 2(k) of the Industrial Disputes Act, 1947 (in short the Act), defines the term 'industrial dispute', which definition is extracted thus:

"2(k) "Industrial dispute" means any dispute or difference between employers and employers, or between employers and workman, or between workmen and workmen, which is connected with the

employment or non-employment or the terms of employment or with the conditions of labour, of any person;"

15. The definition of "industrial dispute" referred above, can be divided into four parts, viz. (i) factum of dispute, (2) parties to the dispute, viz. (a) employers and employers, (b) employer and workmen, or (c) workmen and workmen, (3) subject matter of the dispute, which should be connected with—(i) employment or non-employment, or (ii) terms of employment, or (iii) condition of labour of any person, and (4) it should relate to an "industry".

16. The definition of "industrial dispute" is worded in very wide terms and unless they are narrowed by the meaning given to word "workman" it would seem to include all "employers", all "employments" and all "workmen", whatever the nature or scope of the employment may be. Therefore, except in the case where there can be a dispute between the employers and employers and workmen and workmen, one of the parties to an industrial dispute must be an employee or a class of employees. The first point, therefore, to be noted, perhaps self evident, is that the phrase "employer and workmen", the plural may include singular on either side or any permutation of singular or plural, the masculine including the feminine. In order, therefore, to determine as to whether a controversy or difference or a dispute is an 'an industrial dispute' or not, it must first be determined whether the workman concerned or workmen sponsoring his cause satisfy the conditions of clause (s) of section 2 of the Act. Here in the case the Corporation does not dispute status of the claimant to be of a workman within the meaning of section 2(s) of the Act.

17. The Apex Court put gloss on the definition of "industrial dispute" in *Dimakuchi Tea Estate* [1985 (1) LLJ 500] and ruled that the expression "any person" in clause (k) of section 2 of the Act must be read subject to such limitation and qualification as arise from the context, the two crucial limitations are (i) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to other, and (2) the person regarding whom the dispute is raised must be one for whose employment, non-employment, terms of employment or conditions of labour, as case may be, the parties dispute for a direct or substantial interest. Where workman raised a dispute as against their employment, the person regarding whose employment, non-employer, terms of employment or conditions of labour, the dispute is raised need not be strictly speaking "workman" within the meaning of the Act, but must be one in whose employment, non-employment, terms of employment, or conditions of labour the workmen as a class have a direct or substantial interest. The

observations made by them Apex Court are to be extracted thus:

"We also agree with the expression "any person" is not co extensive with any workman, particular or otherwise, equal with other, that the crucial test is one of community of interest and the person regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment, conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest. Whether such direct or substantial interest has been established in a particular case will depend on its facts and circumstances."

18. In *Kyas Construction Company (Pvt.) Ltd.* [1958 (2) LLJ 660], the Apex Court ruled that an industrial dispute need not be a dispute between the employer and his workman and that the definition of the expression "industrial dispute" is wide enough to cater a dispute raised by the employer's workman with regard to non employment of others, who may not be employed as workman at the relevant time. The Apex Court in *Bombay Union of Journalist* [1961 (II) LLJ 436] has observed that in each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute, the test is whether at the date of reference, the dispute was taken up as submitted by the union of the workmen of the employer against whom, the dispute is raised by an individual workman or by an appreciable number of workman. In order, therefore, to convert an individual dispute into an industrial dispute, it has to be established that it has been taken up by the union of employees of the establishment or any an appreciable number of the employees of the establishment. As far as union of the workmen of establishment itself is concerned, the problem of espousal by them generally presents little difficulty, since such workmen who are members of such unions generally have a continuity of interest with an individual employee who is one of their fellow workman. But difficulty arise when the cause of a workman, in a particular establishment is sponsored by a union which is not of the workmen of that establishment but is one of which membership is open to workmen of their establishment as well as in that industry. In such a case a union which has only microscopic number of the workmen as its member, cannot sponsor any dispute arising between the workmen and the management. A representative character of the union has to be gathered from the strength of the actual number of co-workers sponsoring the dispute. The mere fact that a substantial number of workmen of the establishment in which the concerned workman was employee were also members of the union would not constitute sponsorship. It must be shown that they were connected together and arrived at an understanding by a resolution or by other means and collectively submitted the dispute.

19. The expression "industrial disputes" has been construed by the Apex Court to include individual disputes, because of the scheme of the Act. In *Raghu Nath Gopal Patvardhan* [1957 (1) LLJ 27] the Apex Court ruled as to what dispute can be called as an industrial dispute. It was laid thereon that (1) a dispute between the employer and a single workman cannot be an industrial dispute, (2) it cannot per-se be an industrial dispute but may become if it is taken up by a trade union or a number of workmen. In *Dharampal Prem Chand* [1965(1) LLJ 668] it was commanded by the Apex Court that a dispute raised by a single workman cannot become an industrial dispute unless it is supported either by his union or in the absence of a union by substantial number of workmen. Same law was laid in the case of *Indian Express Newspaper (Pvt.) Limited* [1970 (1) LLJ 132]. However in *Western India Match Company* [1970 (II) LLJ 256], the Apex Court referred the precedent in *Dimakuchi Tea Estate's case* [1958 (1) LLJ 500] and ruled that a dispute relating to "any person becomes a dispute where the person in respect of whom it is raised is one in whose employment, non employment, terms of employment or conditions of labour, the parties, dispute for a direct or substantial interest".

20. What a substantial or considerable number of workmen would be in a given case, depend on particular facts of the case. The fact that an "industrial dispute", is supported by other workmen will have to be established either in the form of a resolution of the union of which workman may be member or of the workmen themselves who support the dispute or in any other manner. From the mere fact that a general union, at whose instance an "industrial dispute" concerning an individual workman is referred for adjudication, has on its roll a few of the workmen of the establishment as its members, it cannot be inferred that the individual dispute has been converted into an "industrial dispute". The Tribunal has therefore, to consider the question as to how many of the fellow workman actually espoused the cause of the concerned workman by participating in the particular resolution of the Union. In the absence of a such a determination by the Tribunal, it cannot be said that the individual dispute acquired the character of an industrial dispute and the Tribunal will not acquire jurisdiction to adjudicate upon the dispute. Nevertheless, in order to make a dispute an industrial dispute, it is not necessary that there should always be a resolution of substantial or appreciable number of workmen. What is necessary is that there should be some express or collective will of a substantial or an appreciable member of the workmen treating the cause of the individual workman as their own cause. Law to this effect was laid in *P. Somasundraman* [1970 (1) LLJ 558].

21. It is not necessary that the sponsoring union is a registered trade union or a recognized trade union. Once it is shown that a body of substantial number of workmen either acting through a union or otherwise had sponsored

the workman's cause, it is sufficient to convert it into an industrial dispute. In *Pardeep Lamp works* [1970 (1) LLJ 507] complaints relating to dispute of ten workmen were filed before the Conciliation Officer by the individual workmen themselves. But their case was subsequently taken up by a new union formed by a large number of co-workmen, if not a majority of them. Since this union was not registered or recognized, the workmen elected five representatives to prosecute the cases of ten dismissed workmen. Thus cases of the dismissed workmen were espoused by the new union, yet unregistered and unrecognized. The Apex Court held that the fact that these disputes were not taken up by a registered or recognized union does not mean that they were not "industrial dispute".

22. It is not expedient that same union should remain incharge of that dispute till its adjudication. The dispute may be espoused by the workmen of an establishment, through a particular union for making such a dispute an "industrial dispute", while the workman may be represented before the Tribunal for the purpose of section 36 of the Act by a member of executive or office bearer of altogether another union. The crux of the matter is that the dispute should be a dispute between the employer and his workmen. It is not necessary that the dispute must be espoused or conducted only by a registered trade union. Even if a trade union ceases to be registered trade union during the continuance of the adjudication proceedings that would not affect the maintainability of the order of reference. Law to this effect was laid by the High Court of Orissa in *Gammon India Limited* [1974 (II) LLJ 34]. For ascertaining as to whether an individual dispute has acquired character of an individual dispute, the test is whether on the date of the reference the dispute was taken up as supported by the union of the workmen of the employer against whom the dispute is raised by the individual workman or by an appreciable number of the workman. In other words, the validity of the reference of an industrial dispute must be judged on the facts as they stood on the date of the reference and not necessarily on the date when the cause occurs. Reference can be made to a precedent in *Western India Match Co. Ltd.* [1970 (II) LLJ 256].

23. Here in the case, not even an iota of facts are brought over the record to the effect that the union took up the cause of the claimant as their own. It is also not shown that the members of the union had shown their collective will in favour of the cause of the claimant. Thus it is evident that there is a complete vacuum of facts to the effect that the union espoused the cause of the claimant. Resultantly there is no material to conclude to the effect that the dispute acquired status of an industrial dispute. The reference is liable to be answered against the claimant on that score.

24. Now coming to facts, when the claimant moved an application for appointment on compassionate grounds, no vacancy was available for her. The Corporation can offer 5% of the posts to such applicants. Since the case of the claimant could not be considered for compassionate appointment, for want of a vacant post, the Corporation granted her appointment on daily wage basis on humanitarian grounds. Thus, it is emerging over the record that her appointment on daily wage basis was not against the policy of compassionate appointment. The Corporation granted appointment to the claimant on humanitarian grounds, with a view to help her. When a regular post was available for her, her case was considered for regularization. Her services were regularized with effect from 01.04.2006, *vide* office order dated 21.05.2007. Phased manner regularization policy of the Corporation to regularize services of casual employees, appointed on humanitarian grounds, was adopted by the Corporation *vide* its resolution No. 273 dated 27.06.1988. This policy of regularization of such employees in a phased manner came to the rescue of the claimant. Regularization of services with effect from 01.04.2006 cannot be held to be discriminatory or unwarranted. Claimant could not project a case for regularization of service with effect from 23.05.2002, since no permanent post was lying vacant on that date. Therefore, action of the Corporation for regularizing services of the claimant with effect from 01.04.2006 is found to be justified as well as legal.

25. Claimant has not come out with any case to project that she is entitled to regularization of service from 23.05.2002. On the other hand, the Corporation could establish that she was granted appointment on casual basis, on humanitarian grounds on 23.05.2002. Her services were regularized pursuant to policy approved *vide* resolution No. 273 dated 27.06.1988. Thus, it is crystal clear that the claimant is not entitled to regularization of her services with effect from 23.05.2002. She is not entitled to any relief. An award is passed in favour of the corporation. It be sent to the appropriate Government for publication

DR. R. K. YADAV, Presiding Officer

Dated: 27.09.2013

नई दिल्ली, 26 दिसम्बर, 2013

का०आ० 109.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सचिव, दिल्ली विकास प्रधिकरण के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं-1 के पंचाट (संदर्भ संख्या 176/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[सं एल-42012/41/2012-आईआर(डीयू)]

पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 26th December, 2013

S.O. 109.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 176/2012) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Secretary, DDA and their workman, which was received by the Central Government on 26.12.2013.

[No. L-42012/41/2012-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO. 1, DELHI**

I.D. No. 176/2012

Smt. Rajo
W/o Late Shri Surjeet,
Nagar Nigam Karamchari Sangh,
Delhi Pradesh, P-2/624,
Sultanpuri, Delhi

...Workman

Versus

The Secretary,
Delhi Development Authority,
Vikas Sadan, I.N.A. Market,
New Delhi.

...Management

AWARD

On Shri Surjit Singh was working with Delhi Development Authority (in short the Authority) as a casual worker. He was converted into a work charged employee on 01.08.1980. He expired on 13.07.1982. The Authority paid a sum of Rs. 10,000.00 under the head 'Group Insurance Scheme' to his widow, namely Smt. Rajo Devi. Despite her request, the Authority opted not to grant family pension in her favour. She approached the Nagar Nigam Karamchari Sangh (in short the Sangh) for redressal of her grievance. The Sangh raised a dispute before the Conciliation Officer, who entered into conciliation proceedings. Since the Authority contested the claim, conciliation proceedings ended into a failure. On consideration of failure report submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, *vide* order No. L-42012/41/2012-IR(DU), New Delhi dated 16.04.2012, with following terms:

"Whether action of the management of Delhi Development Authority (DDA) in denying ex-gratia family pension to Smt. Rajo Devi, wife of late Shri Surjit Singh, ex-safai Karamchari as per laid down policy and guidelines of Government of India with

effect from 01.01.1986 is justified or not? If not, what relief the workman is entitled to and from which date."

2. Notice was sent to Smt. Rajo Devi by registered post on 05.12.2012, calling upon her to file claim statement before the Tribunal on or before 01.01.2013. This notice was sent to her through the Sangh, at P-2/624, Sultanpuri, Delhi, the address provided by the appropriate Government in order of reference. Neither the claimant nor the Sangh responded to the notice, so sent.

3. Since none came forward on behalf of the claimant to file her claim statement, fresh notice was sent to her by registered post on 03.01.2013 calling upon her to file claim statement before the Tribunal on 24.01.2013. Notice was also transmitted to the claimant by registered post on 28.01.2013 asking her to file her claim statement on or before 09.02.2013. Lastly, notice dated 22.02.2013 was sent by registered post commanding the claimant to file her claim statement before the Tribunal on or before 11.03.2013. Neither postal articles, referred above, were received back nor was it observed by the Tribunal that postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notices were served upon the claimant. Despite service of these notices, claimant opted to abstain away from the proceedings. No claim statement was filed on her behalf.

4. Since onus of the question referred for adjudication was there on the Authority, it was called upon to file its response to the reference order. In its response the Authority submitted that Shri Surjit Singh was not a permanent employee. He was converted to work charged establishment as Safai Karamchari on 01.8.1980. He expired on 13.07.1982. As per CCS (Pension) Rules 1972, family pension is not applicable to a person who is employed on casual and daily rate basis. Such person is entitled to benefit of contributory provident fund. Since Shri Surjit Singh was not appointed on work charged roll, his widow is not entitled to family pension. A sum of Rs. 10,000.00 was paid to Smt. Rajo Devi, widow of the deceased, under the head 'Group Insurance Scheme', which amount was received by her. It has been claimed that the dispute raised by Smt. Rajo Devi, merits dismissal.

5. Arguments are heard at the bar. None came forward on behalf of the claimant to advance arguments. Shri Deepak Kumar Dhingra, Authorized representative, advanced arguments on behalf of the Authority. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

6. As reported by the Authority, Shri Surjit Singh was working as Safai Karamchari on casual basis. He was converted to work charged Safai karamchari on 01.08.1980. He expired on 13.07.1982. The authority claims that he was not a civil servant, hence his widow is not eligible for family

pension. In view of these facts, question for consideration would be as to what was the status of Shri Surjit Singh, who was working on work charged establishment of the Authority. It is a matter of common knowledge that the Authority had adopted rules contained in manual III, applicable to Central Public Works Department. Work charged establishment has been defined therein in the manual as follows:—

"Broadly speaking, work charged establishment means that establishment whose pay, allowances etc. are directly chargeable to 'works'. Work charged staff is employed on the actual execution of specific work, sub-work of specific work etc. The cost of work charged establishment should invariably be shown as a separate sub head of the estimate for a work. In other respects, work charged staff is comparable to regular categories."

7. Posts in work charged establishment have been classified into group 'C' or group 'D' *vide* office memorandum No. 22/09/2002-EC X dated 20.05.2002 issued by the Director General (CPWD), New Delhi relevant extract of the same are reproduced thus:—

"For the purpose of grant of leave, membership of trade union etc., the employee in work charged establishment are regarded as industrial staff and covered by labour laws as applicable to them.

Depending on the skill involved in the posts attached to them, work charged posts have been categorized as unskilled, semi-skilled, skilled, highly skilled and skilled supervisory.

Fundamental Rules and Supplementary Rules are also applicable to the work charged staff. Ministry of Law have opined that work charged employees in Central Public Works Department are civil servants in terms of Article 311 of the Constitution.

8. The above provisions of the manual make it apparent that a work charged employee is a civil servant. Thus, it is crystal clear that Shri Surjit Singh was a civil servant working on group 'D' post, on being converted to work charged Safai Karamchari by the Authority on 01.04.1980. Claim put forward by the Authority that he was a casual employee in August 1980 in unwarranted. As per facts presented. Shri Surjit Singh expired on 13.07.1982. Question for consideration would be as to whether Smt. Rajo Devi is entitled to family pension? Family pension is granted to the family of a Government service in the event of his death while in service or after retirement. Family Pension Scheme 1964 was introduced with effect from 01.01.1964. As per the Scheme, in the event of death of a Government servant while in service or after retirement, his family will get family pension if—

- (i) In the case of death while in service—

- (a) He has completed a minimum period of one year's service; or
- (b) He had been medically examined and found fit for appointment in Government service when his death occurred before completion of one year's service.

- (ii) In case of death after retirement—

He was on the date of death in receipt of pension or compassionate allowance.

9. Family pension is payable to the family of the deceased Government servant/pensioner. In the scheme, family has been defined to mean—

- (i) Wife (whether marriage took place before or after retirement) in the case of male government servant.
- (ii) Husband whether marriage took place before or after retirement) in the case of female Government service.
- (iii) Unmarried son(s)/unmarried daughters (born before or after retirement) who have not attained the age of 25 years.
- (iv) Widowed daughters/divorced daughter (born before or after retirement) without any age restriction.
- (v) Parents who were wholly dependent on the Government servant when he was alive, provided that the deceased Government servant had left behind neither the widow/widower nor an eligible son or daughter or a widowed/divorced daughter and that the earnings of the parents is not more than Rs. 3500.00 per month.

Unmarried son(s) below the age of 25 years or married daughter below the age of 25 years include such sons and daughters adopted before or after retirement. Wife or husband shall include respectively judicially separated wife and husband.

10. From January, 2006, period for which family pension is payable is as follows:—

- (i) In the case of childless widow, for life or till her independent income from all sources becomes equal to Rs. 3500.00 per month or more, *i.e.* even after remarriage.
- (ii) In the case of widow with child(ren) or widower upto to the date of death or remarriage, whichever is earlier.
- (iii) In the case of unmarried son/unmarried daughter, untill he/she attains age of 25 years or upto to the date of his/her marriage or till the date from which her/his income becomes equal to Rs. 3500.00 or more per month.
- (iv) In the case of widow (including widowed/disabled)/divorced daughter(s) (including disabled) for life up to the date of her remarriage or till the date his/her

income becomes equal to Rs. 3500.00 or more per month, or death, whichever is earlier. Such daughter shall not be required to come back to her parental home.

- (v) In the case of wholly dependent parents (till his/her death).

11. When facts of the present controversy are gauged through provisions of the scheme referred above, it came to light that Shri Surjit Singh rendered continuous service of 1 year, 11 months and 13 days. Therefore, it is evident that on the date of his death, he had completed more than one years' continuous service. Smt. Rajo Devi, happens to be his widow and falls within the definition of 'family', given by the scheme for the purpose of family pension. Resultantly, it is crystal clear that Smt. Rajo Devi was entitled for family pension. The Authority opted not to undertake any exercise to the effect that Smt. Rajo Devi had independent income from all sources equal to Rs. 3500.00 or more. Therefore, it is evident that the Authority was not at all justified when it denied family pension to Smt. Rajo Devi. Action of the Authority in denying family pension to Smt. Rajo Devi is violative of the Family Pension Scheme, 1964.

12. It has not come over the record that Smt. Rajo Devi had no income or her income from all independent sources is less than Rs. 3500.00 per month. Therefore, the Authority is supposed to undertake an exercise to ascertain income of Smt. Rajo Devi and in case she does not have any income or her income is less than Rs. 3500.00 per month, she is entitled to family pension. As per the scheme normal rate of family pension will be @ 30% of pay of the deceased employee, which shall not be less than Rs. 3500.00 per month. Consequently, the Authority is commanded to undertake the exercise to ascertain whether Smt. Rajo Devi has independent income which is less than Rs. 3500.00 per month from all sources and when facts are found to be in affirmative, grant family pension to her. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated: 01.10.2013

DR. R.K. YADAV, Presiding Officer

नई दिल्ली, 26 दिसम्बर, 2013

का०आ० 110.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, भारतीय राष्ट्रीय राजमार्ग प्राधिकरण के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं-1 पंचाट (संदर्भ संख्या 324/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[सं० एल-42012/67/2011-आईआर (डीयू)]

पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 26th December, 2013

S.O. 110.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 324/2011) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Manager, NHAI and their workman, which was received by the Central Government on 26/12/2013.

[No. L-42012/67/2011-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
NO. 1, DELHI**

I.D. No. 324/2011

Sh. Jagir Singh S/o Sh. Ranbir Singh,
R/o Vill. & Post-Paksama,
Rohtak-124001.

....Claimants

Versus

1. The Manager,
National Highway Authority of India,
Plot No. 3, G-5-6, Sector 10,
Papankala, Dwarka,
New Delhi-110075.
2. M/s. D.S. Construction Limited,
C-66, South Extension-II,
New Delhi.

...Managements

AWARD

Concession agreement, executed between National Highway Authority of India (in short the Authority) and M/s. D.S. Construction Ltd., which company is now known as M/s. DSC Ltd. (in short the contractor), empowered the contractor to collect toll tax at Delhi Gurgaon Expressway. To carry out the work awarded to the contractor by the Authority, former engaged its employees. In April 2010, Shri Jagir Singh served a notice of demand on the contractor as well as the Authority projecting therein that he was employed as DG Operator by the Authority and working as such for them at IFFCO Chowk, Gurgaon. He details that in a clandestine manner, he was shown to be an employee of the contractor. It was further asserted therein that his services were dispensed with without any rhyme or reason on 14.01.2008. He projects a claim for reinstatement in service with continuity and full back wages. His demand was not conceded to, either by the Authority or the contractor. He raised an industrial dispute before the Conciliation Officer. Since his claim was contested by the

Authority as well as the contractor, conciliation proceedings ended in failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, *vide* order No. L-42012/67/2011-IR(DU), New Delhi, dated 16.09.2011, with following terms:

"Whether there was any employer-employee relationship between Shri Jagir Singh and management of National Highway Authority of India, Delhi? If so, whether workman has completed 240 days service in the consecutive 12 months period? If yes, whether the action of the management of National Highway Authority of India, Delhi, in terminating the service of Shri Jagir Singh, ex-DG Operator, with effect from 14.01.2008 is legal and justified? What relief the workman is entitled to?"

2. Claim statement was filed by Shri Jagir Singh, pleading therein that he was appointed by the Authority for a permanent job about 20 years ago. He was appointed as DG Operator. No appointment letter was issued in his favour. At the time of his appointment, the Authority obtained his signatures on certain printed as well as plain papers, creating an impression for him that those documents were required to complete service record. He presents that the Authority may use those documents for illegal designs.

3. Claimant asserts that wrong service record was prepared by the Authority. Since he is ill educated, the Authority took undue advantage of that fact, and transferred his services under the contractor. The contractor used to take 12 hours of work from him. Attendance card and benefits towards PF etc., were not accorded to him. The contractor also obtained his signatures on certain printed as well as blank papers, who may also use those documents for illegal designs. According to the claimant, the Authority as well as the contractor carry out combined business to collect toll tax on Gurgaon-Jaipur Expressway.

4. He was deputed to work at IFFCO Chowk, Gurgaon to run a generator, pleads the claimant. He was carrying out his duties efficiently. Suddenly, his services were dispensed with on 14.01.2008. Neither any notice nor charge sheet was served upon him. Retrenchment compensation was also not paid to him. He served the Authority till termination of his service. He approached the Authority many a times for reinstatement of his service, but to no avail.

5. Since he is not well versed with law, he was forced to cool his heels at his residence. Later on, he met with an accident and remained confined to bed for many months. When he came to know about his rights, he approached the Conciliation Officer. He seeks reinstatement in service of the Authority with continuity and full back wages.

6. Claim was demurred by the Authority, pleading that no relationship of employers and employee ever existed

between the parties. Claimant files claim statement on concocted and false facts. The Authority denied that the claimant was ever employed or appointed by them, as claimed. There was no occasion for the Authority to obtain signatures of the claimant on some printed as well as blank papers, as alleged by him. In view of above factual proposition, there cannot be any question of using those alleged documents for illegal designs. It has been denied that service of the claimant was transferred under control and supervision of the contractor. When he was not appointed by the Authority, there was no occasion to issue attendance card and grant him PF benefits etc. He was never deputed to work at IFFCO Chowk, Gurgaon, to operate generator. Since he was never employed by the Authority, there was no occasion to dispense with his services on 14.01.2008, as claimed. It has been prayed that claim, being false and frivolous, may be dismissed.

7. Counter was also filed by the contractor on the same lines as detailed by the Authority, in its written statement. It has been asserted that the claimant was never appointed by the contractor. It is disputed that services of the claimant were transferred under supervision and control of the contractor by the Authority. It has further been disputed that the contractor obtained signatures of the claimant on some printed as well as blank documents, which can be used for illegal purposes. Contractor projects that it does not carry out joint business with the Authority.

8. Contractor presents that it collects toll tax on Delhi-Gurgaon Expressway and not at Gurgaon-Jaipur Expressway. Toll tax is collected by it as part of concession agreement executed between it and the Authority. Since the claimant was never appointed, there was no occasion to avail his services at IFFCO Chowk, Gurgaon. Claim put forth by the claimant, to the effect that his services were dispensed with on 14.01.2008, is false to his own knowledge. His claim statement may be dismissed, pleads the contractor.

9. On pleadings of the parties, following issues were settled:

- (1) Whether there was relationship of employer and employee between the claimant and National Highway Authority of India?
- (2) Whether the claimant was put in the employment of M/s. D.S. Construction Ltd. by National Highway Authority of India? If yes, its effects.
- (3) Whether the claimant has rendered continuous service of 240 days in preceding 12 months from the date of termination of his services?
- (4) Whether termination of services of the claimant amounts to retrenchment?
- (5) As in terms of reference.

10. Case was listed for evidence of the parties several times. From 10.05.2012 till 07.01.2013, the claimant opted not to attend the proceedings. During that period, case was adjourned six times for evidence of the claimant. However, not even a single witness was brought forward to testify facts in his favour. On 07.01.2013, Shri Ajmer Singh authorized representative of the claimant, appeared and sought adjournment to adduce evidence on behalf of the claimant. Thereafter, case was again adjourned for six times, but neither the claimant nor his authorised representative opted to attend the proceedings. Since none came forward on behalf of the claimant, the Tribunal was constrained to proceed with the matter under rule 22 of Industrial Disputes (Central) Rules, 1957 and to close evidence of the claimant.

11. Shri Pramod Kumar Kaushik, Manager, tendered his affidavit dated 05.11.2012, as evidence on behalf of the Authority. Shri Jorawar Singh filed his affidavit dated 08.10.2012 as evidence, on behalf of the contractor. No other witness was brought forward either by the Authority or the contractor.

12. Arguments were heard at the bar. Shri Arun Yadav, authorized representative, advanced arguments on behalf of the Authority. Shri Rajiv Kumar, authorised representative, raised submissions on behalf of the contractor. As projected above, none came forward on behalf of the claimant to make his submissions. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

Issue No. 1

13. For answer to the proposition, question for consideration would be as to how relationship of employer and employee are created? For an answer to this proposition, it is to be taken note of as to how a contract of service is entered into. The relationship of employer and employee is constituted by a contract, express or implied between employer and employee. A contract of service is one in which a person undertakes to serve another and to obey his reasonable orders within the scope of the duty undertaken. A contract of employment may be inferred from the conduct which goes to show that such a contract was intended although never expressed and when there has, in fact, been employment of the kind usually performed by the employees. Any such inference, however, is open to rebuttal as by showing that the relation between the parties concerned was on a charitable footing or the parties were relations or partners or were directors of a limited company which employed no staff. While the employee, at the time, when his services were engaged, need not have known the identity of his employer, there must have been some act or contract by which the parties recognized one another as master or servant.

14. Not to talk projecting evidence on above parameters on creation of relationship of employer and employee between the parties. Claimant opted not to adduce any evidence. Onus was there on the claimant to establish that relationship of employer and employee were created between him and the Authority. To discharge that onus, no evidence of any sort was produced by the claimant. There had been complete vacuum of evidence on the issue. On the other hand, Shri Kaushik swears in his affidavit dated 05.11.2012 to the effect that the claimant was never employed by the Authority in any manner. No appointment letter, employment card and EPF card etc. was issued. The Authority has no concern with the claimant. It has also been affirmed by Shri Kaushik that the claimant was never deputed to work as generator operator at IFFCO Chowk, Gurgaon by the Authority.

15. Shri Jorawar Singh also asserts in his affidavit dated 08.10.2012 that the claimant was never appointed by the contractor. He denies that the Authority ever deputed the claimant to work under supervision and control of the contractor. There was no such arrangement between the Authority and the contractor, under which the former may depute its employees to work under control and supervision of the latter. Claimant never worked for the contractor at IFFCO Chowk, Gurgaon.

16. As projected above, there is no evidence at all from the side of the claimant to establish that he was ever appointed by the authority as generator operator. In the same way, claimant has not been able to establish that he ever worked as generator operator for the Authority or the contractor. Claimant absolutely failed to establish that he was ever employed by the Authority or the contractor to render services as generator operator. Resultantly, it is crystal clear that the claimant failed to discharge onus resting on him. contra to it. Authority denies relationship of employer and employee between the parties. It is concluded that no relationship of employer and employee has been established between the claimant and the Authority. Issue is, therefore, answered in favour of the Authority and against the claimant.

Issue No. 2

17. Since the claimant has not been able to establish relationship of employer and employee between him and the Authority, there was no situation wherein evidence to this effect may come on record that his services were put under control and supervision of the contractor by the Authority. Resultantly, it is absolutely clear that the claimant could not discharge onus to establish that his services were clandestinely put under the supervision and control of the contractor by the Authority. Issue is, therefore, answered in favour of the authority and the contractor and against the claimant.

Issue No. 3, 4 and 5

18. As relationship of employer and employee was not established between the Authority or the contractor on the one hand and the claimant on the other, above issues become superfluous. There is no occasion to adjudicate these issue. In view of the findings recorded on Issue No. 1 & 2, it is announced that the claimant is not entitled to any relief, much less the relief of reinstatement in service of the Authority. His claim statement is brushed aside. An award is passed in favour of the Authority and against the claimant. It be sent to the appropriate Government for publication.

Dated : 30.7.2013

DR. R.K. YADAV, Presiding Officer

नई दिल्ली, 26 दिसम्बर, 2013

कां० 111.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय कंटेनर कॉर्पोरेशन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं०-1 के पंचाट (संदर्भ संख्या 34/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[सं० एल-42011/178/2012-आईआर(डी०यू०)]

पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 26th December, 2013

S.O. 111.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. no. 34/2013) of the Central Government Industrial Tribunal and Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Bhartiya container Corpn. Ltd. and their workman, which was received by the Central Government on 26/12/2013.

[No. L-42011/178/2012-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. 1
DELHI**

I.D. No. 34/2013

Shri Bale Ram,
C/o General Secretary,
Indian Steel and Metal Workers Union,
1800/9, Govind Puri Extn., Kalkaji,
New Delhi-110019.

....Claimant

Versus

1. M/s. Shogun Security Services,
222-H, Sainik Farms,
New Delhi-110062.
2. M/s. Bhartiya Container Corpn. Ltd.
Domestic Container Depot, Okhla,
Phase II, New Delhi-110020.

.....Management

AWARD

A security guard working with M/s Shogun Security Services (hereinafter referred to as the contractor) was sent to perform his duties by the contractor at the premises of M/s Bharat Container Corporation (hereinafter referred to as the principal employer), at its Domestic Container Depot, Okhla Phase II, New Delhi. While performing his duties at the aforesaid Depot, the security guard committed lapses in his duties. His super supervisor checked him and advised him to remain off from duties for two days. He abused the supervisor, besides criminally intimidating him. After two days, the security guard met his supervisor near Sarita Vihar Metro Station, New Delhi. He felt enraged and assaulted his supervisor. As a result of the assault, he started bleeding from his head. The supervisor lodged a report at Police Station, Sarita Vihar, New Delhi. He also reported the matter to the contractor. Taking stock of entire facts, the contractor was of the view that since Okhla Depot as a place of high value cargo, the security guard were not fit for duties there. Services of the security guard was terminated by the contractor on 05.09.2011. The security guard felt aggrieved by that action and raised an industrial dispute before the Conciliation Officer. During the course of conciliation proceedings, wages and other dues of the security guard were paid by the contractor. However, the contractor resisted his claim for reinstatement in service, which resulted into failure of conciliation proceedings. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No. L-42011/178/2012-IR(DU), New Delhi dated 13.02.2013, with following terms:

"Whether action of the management of M/s Shogun Security Services in terminating employment of the workman Shri Bale Ram S/o Shri Hari Lal, with effect from 03.09.2011 is legal or justified? To what relief the workman is entitled to?"

2. In the reference order, the appropriate Government commanded the parties to the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions, so given, Shri Bale Ram opted not to file his claim statement with the Tribunal.

3. Notice was sent to Shri Bale Ram by registered post on 07.03.2013, calling upon him to file claim statement before the Tribunal on or before 04.04.2013. This notice was sent to him through the General Secretary, Indian Steel and Metal Workers Union, 1800/9, Govindpuri Extension, Kalkaji, New Delhi, the address provided by the appropriate Government in order of reference. Neither the claimant nor the union responded to the notice, so sent.

4. Since none came forward on behalf of the claimant to file his claim statement, fresh notice was sent to him by registered post on 05.04.2013 calling upon him to file claim statement before the Tribunal on 02.05.2013. Notices were again transmitted to the claimant by registered post on 07.05.2013 and 19.06.2013 asking him to file his claim statement on or before 12.06.2013 and 22.07.2013 respectively. Lastly, notice dated 23.07.2013 was sent by registered post commanding the claimant to file his claim statement before the Tribunal on or before 29.08.2013. Neither the postal articles, referred above, were received back nor was it observed by the Tribunal that postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notices were served upon the claimant. Despite service of these notices, claimant opted to abstain away from the proceedings. No claim statement was filed on her behalf.

5. When claim statement was not filed by the security guard, contractor was called upon to file his response to the reference order. The contractor filed his response before the Tribunal pleading therein that the claimant was deputed to work as security guard at Domestic Container Depot, Okhla Phase II, New Delhi, which depot belonged to Bharat Container Corporation Ltd. While performing his duties, the security guard misbehaved with the security supervisor on 02.09.2011. He did not attend to his duties for next two days. On 05.09.2011, he assaulted the security supervisor, Shri Jagroop Singh, who lodged a complaint against him, alongwith his medical examination report. Considering the fact that Shri Bale Ram was deputed at the aforesaid Depot, which was place of high value cargo and mass of labour, drivers and traders were to be dealt with, it was thought expedient to dispense with the services of Shri Bale Ram. Therefore, his services were terminated. He was called many a times to collect his duties, but he did not turn up. As per directions of the labour authorities, he turned up on 04.01.2012 and collected his dues, which were paid him through cheque nos. 157060, 157106, 157350 and 157391, all drawn on Bhikaji Cama Place branch of Corporation Bank. Since his dues stood paid, he is not entitled to any relief. Even otherwise contract agreement with the principal employer expired on 31.08.2012 and as such, claimant cannot be engaged on the post of security guard. Aforesaid facts make it clear that there is no case for reinstatement in service, pleads the contractor.

6. Contractor projects that the services of Shri Bale Ram were dispensed with on 05.09.2011 by oral order when

a complaint was lodged against him by the supervisor. Copy of the complaint, annexed with the response, highlights that Shri Bale Ram assaulted his supervisor, to whom he caused severe head injuries. Consequently, above facts bring it to the light of the day that the security guard committed misconduct, which made the contractor to dispense with his services. Therefore, question needs to be considered as to whether the contractor dispensed with the services of the claimant as a cloak of discharge. For an answer to this proposition, it would be expedient to have a glance on the law in that regard. Expressions 'discharge' and 'dismissals' have acquired definite connotations in the industrial jurisprudence. The word 'dismiss' is understood to mean termination of service of a workmen as a measure of punishment for an act of misconduct. But the word 'discharge' is ambiguous, which is used to mean termination of services of a workman as a punishment milder than dismissal and also to mean termination of service in terms of the contract of employment or discharge simpliciter. Therefore, when an employer terminates service of a workman for the reason that he was a temporary employee and his services were no longer required, it is a case of discharge simpliciter under the contract.

7. For adjudication of an industrial dispute, the industrial adjudicator has to decide as to whether discharge of an employee was discharge simpliciter or a punishment of discharge has been dressed in the cloak of discharge simpliciter by wording the order is innocuous language. He has to decide as to whether the order based upon loss of confidence is a disguise to cover up the inability to establish the charges in an enquiry or whether it is based on a bona fide suspicion created against the employee making it impossible or fishy to keep the employee in service. In *Hindustan Steels* [1970 (1) LLJ 228], the Apex Court was confronted with a situation where the employee was working as a fitter in a blast furnace, a vital part of the company, where both efficiency and trust would matter. He was said to join in an illegal strike and a criminal case had been filed against him and there was an adverse report of the police against him. The Apex Court observed that discharge of the employee from service was not penal. In *Air India Corporation* [1972 (1) LLJ 501], the employee had misbehaved with an air hostess and due to this conduct the management had lost confidence in him. The Apex Court ruled that termination of his service under the regulation by paying 30 days salary in lieu of notice was not penal.

8. In *Binny Ltd.* [1974 (3) SSC 152], the employee lost confidence in the workmen as he availed special leave without wages on false representation and failed to resume duties when he was intimated that his sanctioned leave was cancelled and he was ordered to join immediately. In that case too, the Apex Court ruled that by his own admission, the employee had acted in a manner by which the employer could possibly have no confidence in him in future. However, in *L. Micheal* [1975 (1) LLJ 262], loss of

confidence was alleged by the employer as a result of appellant being a smuggler of inside information. However, it was found that he was a permanent employee of proved efficiency and was appreciatively given two merit increments. The Apex Court ruled that it was open to an employer who believes or suspects that his employee, particularly one holding a position of confidence, has betrayed that confidence to terminate his employment and discharge him without any stigma attaching to the discharge. The Court added that such belief and suspicion of the employer should not be a mere whim or fancy. It would be bona fide and reasonable. It must rest on some tangible basis and the power has to be exercised by the employer objectively in good faith which means honestly, with due care and prudence.

9. In such cases, the Tribunal can go behind the order to see its substance than the form. It is well established law that the language in which the order of termination of service is couched is not conclusive. It is open to the Tribunal to lift the veil to see whether the forum is a mere camouflage for an order of dismissal or *vice versa*. If the Tribunal finds that the order of discharge simpliciter, but its nature and character, in reality is a measure of punishment of misconduct, it may set aside the order for non-compliance of the procedure required to be followed in a disciplinary action. In Jagdish Prasad (1986 Lab.I.C. 1377), service of a temporary employee was terminated on the ground that he had concealed the fact of his removal from service under the former employer on the charge of consubsumption at the time when he had applied for the post. But the order of the employer purported to terminate the service under the contract and no inquiry was held into the matter before termination of the service. The Supreme Court held that the order of termination was not an innocuous order but was an order which on the face of it cast stigma on the service career of the employee and was in fact an order of dismissal on the charge of concealment of facts.

10. Now I would turn to the facts. Complaint dated 05.09.2011, made by the security supervisor, makes it apparent that Shri Bale Ram assaulted him at a place near Sarita Vihar Metro Station and as a result of which assault he sustained serious injuries on his head. He got eight stitches on his head. He lodged a report with PS Sarita Vihar against Shri Bale Ram. These facts, coupled with the misbehavior of Shri Bale Ram on 02.09.2011, made the contractor to dispense with his services by an oral order. Admittedly, above acts make it apparent that the contractor dispensed with his services, when there was a complaint against the security guard relating to commission of serious misconduct. However, no written termination order was issued. At this juncture, the contractor pleads that since the Depot where Shri Bale Ram was serving was of high value cargo where they were to deal with mass labour, drivers and traders hence it was decided to dispense with service of the claimant. The explanation offered by the

contractor makes it apparent that services of the claimant were dispensed with when his employer felt that the claimant would not come up to their expectation. These facts project the state of mind of his employer, which existed when order under reference was passed. The claimant has not come forward to dispel these facts. Unassailed facts, detailed by the contractor, are accepted as true. From those facts, it emerges that the employer lost confidence in the claimant and terminated his services. Resultantly, oral order of termination of services of the claimant cannot be termed as dismissal, owing to misconduct.

11. Facts and circumstances, detailed above, makes me to comment that action of termination of services of the claimant amounts to retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act, 1947 (in short the Act). When there is retrenchment of services of an employee, to seek benefit under provisions of Section 25F of the Act, he has to bring it over the record that he rendered continuous service of more than 240 days, as contemplated by Section 25B of the Act, in preceding 12 months from the date of his retrenchment. Onus is there on the claimant to establish that fact. Not to talk of discharge of onus, the claimant opted not to file his claim statement. Evidently, there is complete lack of facts to project that the claimant rendered continuous service of 240 days in preceding 12 months from the date of his termination. Under these circumstances, it cannot be said that the claimant was entitled to protection of Section 25F of the Act.

12. As projected by the contractor, services of the claimant were dispensed with when he lost confidence in him. The employer took note of the proposition that the security guard would not come up to their expectation, when he was to work at high value cargo. Therefore, there were ample reasons when the contractor dispensed with the services of the claimant. In such a situation action of the employer satisfied the rigors of Section 25-G of the Act, where an employer can dispense with the service of an employee, though not junior most, by recording reasons therefore. It cannot be said that the procedure of retrenchment as contained in Section 25-G of the Act was violated.

13. No fact has been highlighted to show that after some time other persons were engaged by the contractor without according an opportunity of re-employment to the security guard. Thus, there is hardly any scope for application of provisions of Section 25H of the Act to the present controversy. In view of all these facts, it is evident that the security guard is not entitled to any relief.

14. Action of the contractor is found to be legal and justified. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

DR. R.K. YADAV, Presiding Officer

Dated: 12.09.2013

नई दिल्ली, 30 दिसम्बर, 2013

का०आ० 112.—औद्योगिक विवाद अधिनियम, 1947, (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, मुम्बई के पंचाट (संदर्भ संख्या 49/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/12/2013 को प्राप्त हुआ था।

[सं एल-12011/68/2008-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th December, 2013

S.O. 112.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 49/2009) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai No. 2 as shown in the Annexure, in the industrial dispute between management of State Bank of India, H-18, Block B, Madhuli Bldg., and their workmen, which was received by the Central Government on 30/12/13.

[No.L-12011/68/2008-IR(B-1)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT

INDUSTRIAL TRIBUNAL NO. 2,

MUMBAI

PRESENT

K.B. KATAKE, Presiding Officer

REFERENCE NO. CGIT-2/49 OF 2009

EMPLOYERS IN RELATION TO THE MANAGEMENT OF STATE BANK OF INDIA

The Dy. General Manager (I)
State Bank of India
H-18, Block-B, Madhuli Building
Dr. Annie Besant Road
Shivasagar Estate
Worli,
Mumbai-400 018.

AND

Their Workmen

The General Secretary
State Bank of India Staff Union (Mumbai Circle)
'Synergy' State Bank of India
Bandra Kurla Complex
Kurla (W),
Mumbai.

APPEARANCES:

For the Employer : Mr. M.G. Nadkarni
Advocate.
For the Workman : Mr. M.B. Anchan,
Advocate.

Mumbai, the 18th November, 2013.

AWARD PART-I

The Government of India, Ministry of Labour & Employment by its Order No. L-12011/68/2008-IR (B-I), dated 20.05.2009 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of Dy. General Manager, State Bank of India, Worli, Mumbai imposing the punishment of removal from services with superannuation benefit on Shri P.M. Sumara, is legal and justified? If not, what relief the workman is entitled to?"

2. After receipt of the reference, notices were sent to both the parties. In response to the notice, second party workman filed his statement of claim at Ex-7. According to him, he was employed with the first party as Assistant (Cash and Accounts) at Juhu Tara Branch Mumbai. There was sanctioned over draft limit of Rs. 40,500 on 23.03.2001. It was subsequently enhanced to Rs. 45,000 *w.e.f.* 22.04.2002 and to Rs. 53,500 from 29.07.2004 and the same was further enhanced to Rs. 3 lakhs from 22.07.2005 by Shri S.V. Ghadigaonkar, the Manager against N.S.Cs. In spite of having the benefit of Rs. 3 lakhs over draft facility the workman was served with charge sheet dt. 2.3.2006 and had to face inquiry. The Inquiry Officer held that charges are proved and disciplinary authority imposed punishment on the workman of removal from service. The workman preferred appeal against the said decision of the disciplinary authority and the same was rejected by the appellate authority. Thereafter the union has raised the industrial dispute. As conciliation failed as per the report of ALC (C), Ministry of Labour sent the reference to this Tribunal.

3. According to the workman the inquiry was not fair and proper. It was held in violation of principles of natural justice. The workman was not aware of the procedure of the departmental proceeding. The IO did not ask the workman to submit his defence reply to the charge sheet and he was denied the opportunity to submit his reply to the chargesheet. During the inquiry workman had called the copies of preliminary inquiry report, copy of rules, procedure for sanctioning, enhancing and sanctioning over draft facility, reverse side of cheque produced as document in the inquiry etc.

Neither Bank has produced those documents in the inquiry proceedings nor copies thereof were supplied to the workman. The workman has not availed the overdraft facility over Rs. 3,00,000/- which was the limit. The charge against the workman is baseless. Whatever excess money according to Bank workman had withdrawn, the same amount has been returned by the workman to the Bank on 7.2.2006 much before commencement of inquiry. Whatever amount was withdrawn by the workman, the same was approved by the passing officer. Therefore workman has not committed any misconduct as alleged. He had withdrawn the amount through cheques. The concerned officer responsible for payments had scrutinised the cheques and passed the payment. He has not exceeded the limit of o/d. The workman was falsely implicated in the matter. The inquiry was not fair and proper. The findings of the IO were perverse. The findings of the appellate authority are also perverse. Due to blot on his record the workman could not get any other suitable job and he is unemployed. The workman therefore prays that order of removing him from service be set aside being unjust and illegal and he be reinstated in the service with full back wages and continuity of service.

4. The first party Bank resisted the statement of claim *vide* its written statement at Ex-8. According to them, the overdraft against NSCs account of the workman was maintained in a proper manner prior to 22.7.2005. On 22.7.2005 due to some error in the system, the limits of all the accounts got erased. Consequently the staff members of the branch requested the manager Shri S.V. Ghadigaonkar to restore the limits urgently so as to facilitate them to operate the same. After confirming that the limits have vanished from the system, Manager Ghadigaonkar asked the staff members to write on a piece of paper their loan account numbers and the limits to be restored. The workman indicated the limit to be restored to him as Rs. 3,00,000 despite being fully aware that the drawing limit sanctioned to him was only Rs. 53,500/-. The Br. Manager thereafter restored the limits of all the staff members as indicated by them on the slip of papers. The workman thereafter knowingly withdrew amounts from his account on various dates both in cash and by cheques. It was much beyond the sanctioned limit to him. Infact said amount was unauthorisedly over drawn and retained by him since 29.7.2005 and outstanding in the account as on 31.12.2005 was Rs. 2,86,773.98 ps.

5. In the circumstances the charge sheet was issued to the workman dated 3.2.2006 and charge was framed against him. It was spelt out to him with sufficient clarity in the said charge sheet. Shri Deepak M. Chavan was appointed as Inquiry Officer to conduct the inquiry.

Workman was advised to submit his written statement. He was informed that he would be permitted to defend by representative of a registered trade union of Bank employees of which he was member. The IO has conducted the inquiry. He followed the principles of natural justice. The workman availed services of Tushar V. Musale as his defence counsel. The IO submitted his report on the basis of oral and documentary evidence adduced in the inquiry and held that charge framed against the workman was proved. Copy of the report was forwarded to the workman for his information and for making his submissions thereon. Workman submitted his comments on the inquiry report. After careful perusal of the fact, circumstance, report and the say of the workman the competent authority held him guilty and passed the order of removal of the workman from service. The inquiry was fair and proper. The findings of the IO are not perverse. They denied all the contents in the statement of claim and prayed that the reference be rejected.

6. Following are the issues for my determination. I record my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1.	Whether the inquiry and findings recorded therein are legal and proper?	Yes.

REASONS

Issue No. 1:—

7. In respect of the inquiry, two defects were pointed out on behalf of the second party workman. (1) The IO did not explain him the procedure of inquiry. (2) The management did not supply him the copies of various documents he had sought for. In this respect the Ld. Adv. for the first party submitted that it is not necessary to explain to the charge sheeted employee the procedure of inquiry. The inquiry has to be conducted as per the rules and after following the principles of natural justice. The Ld. Adv. submitted that it is mandatory for the inquiry officer to explain the charges levelled against the workman. It is also mandatory to give sufficient opportunity to the workman to defend himself by engaging a defence representative. It is also mandatory to examine all the witnesses in presence of the workman and his defence representative. It is also mandatory to give an opportunity to the charge sheeted workman to cross-examine all the management witnesses. After conclusion of the inquiry the copy of the inquiry report is also required to be sent to the charge sheeted employee with show cause notice. The Ld. Adv. submitted that the IO has complied with all the

stages of inquiry. He had explained the charges to the workman. Workman was allowed to engage his defence representative. The copies of all the documents produced in the inquiry proceeding were supplied to the workman. Management witnesses were examined in presence of the workman and his defence representative. The defence representative was allowed to cross examine the management witnesses. The workman was also given an opportunity to lead his evidence. After hearing the arguments the IO prepared his report and submitted the same to the management. Management sent the copy of report with show cause notice to the workman and after hearing him, the management passed the order of removal of the workman from service. On the point of fair and proper inquiry guidelines of Apex Court can be resorted to in *Sur Enamel and Stamping Works Ltd. V/s. Their Workmen* (1963 II LLJ 367) wherein the Hon'ble Apex Court laid down the following conditions for fair and proper domestic inquiry. They are:

- (1) The employee proceeded against has been informed clearly of the charges levelled against him,
- (2) The witnesses are examined-ordinarily in the presence of the employee in respect of the charges,
- (3) The employee is given a fair opportunity to cross examine witnesses,
- (4) He is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and
- (5) The inquiry officer records his findings with reasons for the same in his report.

As per the above guidelines the Inquiry Officer has complied with all the points referred above.

8. The second objection raised on behalf of the second party is that he has sought for copies of number of documents from the management and they did not supply him the copies of all those document which he had sought for. Therefore according to him there was violation of principles of natural justice. In this respect the Id. Adv. for the first party submitted that the copies of documents which were referred and relied in the inquiry proceeding were given to the workman. He had sought for copies of number of other documents which were neither produced in the inquiry proceeding nor relied upon by the Inquiry Officer. Therefore non-supply of copies of such documents does not amount to violation of principles of natural justice. In support of his argument the Id. Adv. for the first party resorted to Apex Court ruling in *State of UP and Ors V/s. Ramesh Chandra Mangalik* (2002) 3 SCC 443 wherein the

Hon'ble Court relied upon its earlier judgement in *Chandrama Tewari V/s. Union of India* wherein the Hon'ble Court observed that :

"The obligation to supply copies of documents is confined only to material and relevant documents which may have been relied upon in support of the charges. If a document even though mentioned the memo charges has no bearing on the memo charges or if it is not relied upon or it may not be necessary for cross examination of any witness, non-supply of such a document will not cause any prejudice to the delinquent."

9. On the point the Ld. Adv. for the first party also resorted another Apex Court ruling in *Pandit D. Aher V/s. State of Maharashtra* (2007) 1 SCC 445 in para 10 of the judgement the Hon'ble Court on the point observed that:

"A copy of document which has not been relied upon, is not required to be supplied to a delinquent officer. The documents which are required to be supplied are only those where upon reliance has been placed by the department."

In the case at hand the copies of relevant documents were supplied to the workman. Furthermore the IO has followed fair and proper procedure and had given fair and proper opportunity to the workman. There was no violation of principles of natural justice as has been alleged. Thus I hold that the inquiry was fair and proper.

10. In respect of findings the Ld. Adv. for the first party submitted that findings are based on the evidence on record. He submitted that the inquiry officer has relied upon the evidence led before him and arrived at the conclusion that the workman was guilty for the misconduct of withdrawing more amount of o/d than the limit prescribed for. Therefore findings of the IO cannot be called perverse. He further submitted that the charge is disciplinary inquiry is not required to be proved beyond all doubts as it is required in a criminal trial. In support of his argument the Ld. Adv. for the first party resorted to Bombay High Court ruling in *Tata Infomedia Ltd. V/s. Tata Press Employees Union & Anr.* 2005 (3) Mh. L.J. 105 wherein the Hon'ble Court observed that;

"Disciplinary inquiries are not governed by strict rule of evidence contained in the Evidence Act. The charge in a disciplinary inquiry has to be established on a preponderance of probabilities and not by proof beyond reasonable doubt that would govern a criminal trial."

In the same judgement the Hon'ble Court further observed that :

"A finding which is based on no evidence is liable to be interfered with because it is then susceptible to the interference, arbitrariness and perversity."

The Hon'ble Court further observed that;

"Once a finding in a disciplinary inquiry is based on some evidence, the sufficiency of evidence in proof of the finding lies beyond the scope of scrutiny of the reviewing court."

11. The Ld. Adv. for the first party submitted that in domestic inquiry misconduct can be proved merely on preponderance of probability and even hearsay evidence and confessional statement also can be acted upon. In support of his arguments the Ld. Adv. resorted to Apex Court ruling in Workmen Balmadies Estate V/s. Management Balmadies Estate & Ors. 2008 I CLR 794 wherein the Hon'ble Court held that, The Indian Evidence Act, 1872 is not applicable to the proceeding in domestic inquiry. The Hon'ble Court further observed that;

"In a domestic inquiry all materials which are logically probative including hearsay evidence can be acted upon provided it has reasonable nexus and credibility."

In para 9 of the judgment the Hon'ble Court further observed that;

"...confessional evidence and circumstantial evidence, despite lack of any direct evidence was sufficient to hold the delinquent guilty of misconduct and to justify the order of termination that had been passed."

12. In the light of rulings and above discussions I come to the conclusion that, findings of IO are based on the evidence on record. Therefore they cannot be called perverse. As a result I hold that the inquiry and findings of the IO are legal and proper. Accordingly I decide this preliminary issue No. 1 in the affirmative. Thus I proceed to pass the following order:

ORDER

- (i) The inquiry held against the workman and findings of the IO are held legal and proper.
- (ii) Parties to lead evidence/arguments on the point of quantum of punishment.

Date: 18th November, 2013

K.B. KATAKE, Presiding Officer

नई दिल्ली, 30 दिसम्बर, 2013

का०आ० 113.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण, मुम्बई के पंचाट (संदर्भ संख्या 50/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/12/2013 को प्राप्त हुआ था।

[सं० एल-12012/115/2007-आईआर(बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th December, 2013

S.O. 113.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 50/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure, in the industrial dispute between the management of State Bank of India, and their workmen, received by the Central Government on 30/12/2013.

[No. L-12012/115/2007-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT: K.B. KATAKE, Presiding Officer

REFERENCE NO. CGIT-2/50 of 2007

**EMPLOYERS IN RELATION TO THE MANAGEMENT
OF STATE BANK OF INDIA**

The Chief General Manager
State Bank of India, Local Head Office
Synergy, Plot No. C-6, G Block
Bandra Kurla Complex PB No. 8123
Bandra (E)
Mumbai-400051

AND

THEIR WORKMEN

The Dy. General Secretary
State Bank of India Staff Union (Mumbai Circle)
Synergy, Plot No. C-6, G Block
Bandra Kurla Complex PB No. 8123
Bandra (E)
Mumbai-400051

APPEARANCES:

For the Employer : Mr. M.G. Nadkarni,
Advocate.

For the workmen : Mr. Abhay Kulkarni,
Advocate.

Mumbai, dated the 11th October 2013.

AWARD PART-I

The Government of India, Ministry of Labour & Employment by its Order No. L-12012/115/2007-IR (B-I),

dated 10.10.2007 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the management of State Bank of India in dismissing Shri P.K. Prasad, Assistant (Cash/Accounts) from the services *vide* order dated 24/06/2006 is legal, proper, justified and in proportionate to the magnitude of misconduct? If not, to what relief the concerned workman is entitled?"

2. After receipt of the reference, notices were issued to both the parties. In response to the notice, second party workman filed his statement of claim at Ex-8. According to the workman he had served with the first party Bank for about 13 years. His service was satisfactory and his service record is clean and unblemished. In August, 2003 while the workman was performing his duties at Jindal Extension Counter, Vasind, his superior Mr. Phansekar purportedly noticed certain discrepancies in the accounts of the Bank. The workman denied to have any role to play in the said discrepancies. The discrepancies are alleged to have been based upon the complaint of one Mr. Gama Bind who is illiterate customer of the Bank. The Bank was in need of a scape goat to answer the irregularities and they selected the workman to victimise him. Mr. Phansekar arranged to write complaint in English against the workman and obtained signature of Mr. Gama who does not understand English. Mr. Phansekar in presence of the customers of the Bank got letter of confession written from the workman. The workman has retracted from the contents of the said letter. He has also examined a customer in the inquiry proceeding to established that the letter was obtained from him under force and duress and under the fear of losing his job. The workman has not committed any misconduct as has been alleged. The Bank has also lodged FIR against the workman to the Police. However no action was taken by the Police. The charges levelled against the workman are devoid of merit.

3. The disciplinary authority issued the charge sheet dt 6/01/2004 and suspended the workman. Six months thereafter they appointed Inquiry officer. The Inquiry Officer was bias against the workman. The Inquiry was held in gross violation of principles of natural justice. The attitude of the IO was of complete non-co-operation towards the workman and his defence representative. He used to grant long adjournments to the Presenting Officer. However refused to grant sufficient time to the workman whenever he required time to take inspection of the documents relied upon by the Presenting Officer. The IO behind the back of the workman and his defence representative without hearing them directed the Presenting Officer not to grant inspection of relevant documents to the workman and his

defence representative. There was complete collusion between the Bank and the IO. The workman was victimised. He was denied the opportunity of inspection of original documents. The inquiry report is prepared by the IO who was bias. The inquiry was not fair and proper. The workman has not committed any misconduct. Mr. Phansekar got confession letter written from the workman under threat and pressure. The report of the IO is based on the said confessional letter of the workman. On the basis of the inquiry report, the disciplinary authority of the Bank dismissed the workman. The said action of the Bank is wholly illegal, unjustified and perverse. The findings of the IO are perverse. Therefore the workman has raised industrial dispute. On the report of ALC©, the Central Labour Ministry has sent the reference to this Tribunal. Workman therefore submitted that the action of the Bank in dismissing the workman from service is wholly illegal and unjustified. The findings of the IO are perverse. Therefore he prays that the impugned order of dismissal dt. 24/06/2006 passed by disciplinary authority and confirmed by Appellate Authority be quashed and set aside. He also prays for direction to the first party to reinstate the workman with full back wages, continuity of service and all other consequential benefits.

4. The first party resisted the statement of claim *vide* its written statement at Ex-9. According to them when workman was working as a Clerk at Jindal Extension Counter, Shahpur Branch, it was found that he has committed fraud during the period Jul-Aug 2003. He made fictitious and false entries in the account of Mr. Parasnath Sharma, one of the customers of the Bank. He also prepared fictitious entries in the saving Bank A/c. No. 6/311 of Account holder Mr. Gama Bind. He prepared fictitious bank credit voucher for crediting Rs. 93,313 in the SB A/c of Mr. Gama Bind. On 5/8/2003 the workman posted a withdrawal slip of Rs. 50,000 in the SB Ac of Mr. Gama Bind and gave it to Mr. Phansekar the passing officer for passing the said payment. As withdrawal was not accompanied by the passbook of the account holder, Mr. Phansekar called for the same and upon its presentation passed for payment. Again on 8/8/2003 the workman posted a withdrawal slip of Rs. 53,000 in the SB A/c of Mr. Gama Bind and gave it to Mr. Phansekar for passing it. When Mr. Phansekar called for the account holder, workman informed him that Mr. Gama Bind was held up in Kalyan and he had requested him to collect the payment. Mr. Phansekar refused to pass the withdrawal till Mr. Gama Bind comes before him personally. On that day Mr. Gama Bind did not turn up and Mr. Phansekar kept the withdrawal form and the pass book in his custody and the debit entry of Rs. 53,000 was cancelled in the ledger. Workman informed Mr. Phansekar that Mr. Gama Bind would personally come and collect the payment on the next day. However he did not turn up to the extension

counter even on the next day. On 9/8/2003 the workman removed the withdrawal slip of Rs. 53,000/- from Mr. Phansekar's drawer and destroyed it and stated that he would obtain fresh withdrawal slip from Mr. Gama Bind on 11/8/2003. On 11/8/2003 Mr. Phansekar started making inquiries about the transaction of withdrawal of Rs. 53,000. The workman confessed that he had fraudulently credit Rs. 93,313 in the S/B Account of Mr. Gama Bind and had withdrawn Rs. 50,000 on 5/8/2003. The workman also addressed a letter dt. 11/8/2003 to the Branch Manager, Sahapur Branch and he gave the details of the account of his fraudulent acts and requested the Branch Manager to excuse him the workman has given the said letter voluntarily and without any pressure of any bank official. He had also deposited an amount of Rs. 50,000 in the account of Mr. Gama Bind on 14/8/2003.

5. As the workman had committed fraud he was placed under suspension *vide* Bank memorandum dated 19/11/2003. The Bank also lodged FIR against the workman at Shahpur Police Station on 2/12/2003 and 23/1/2004. Charge-sheet dated 6/11/2004 was issued to the workman. The Bank appointed Inquiry Officer. The IO conducted the inquiry. Mr. J.D. Shringarpure was defence representative of the workman. The IO conducted the inquiry by following the principles of natural justice. Adequate and sufficient opportunity was given to the workman to defend himself. The IO has explained the charges to the workman. The workman was given full and sufficient opportunity to lead his evidence. They denied that the IO was bias. They denied that workman was not given time to inspect the original record. After considering the evidence before him the IO held the workman guilty of the charges levelled against him. The IO sent his report to the disciplinary authority. The disciplinary authority sent the copy of the report with show cause notice to the workman. After giving hearing to the workman the disciplinary authority considering the serious nature of misconduct awarded the punishment of dismissal from service to the workman. According to them the action of the management is quite legal and proper. The inquiry was legal and fair. Findings of the IO are based on the evidence on record and they are not perverse. The punishment is not shockingly disproportionate to the proved misconduct. Therefore the first party prays that the reference be rejected with cost.

6. Following are the preliminary issues for my determination. I record my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1.	Whether the inquiry held against the workman is fair and proper?	Yes.
2.	Whether findings of the inquiry officer are perverse?	No.

REASONS

Issue No. 1:

7. In the case at hand the inquiry is challenged by the workman. According to him the documents produced by the Presenting Officer were not proved in the inquiry proceeding by examining the relevant witnesses. According to them the IO has exhibited those documents illegally without proving them by any witnesses. Such unproved documents cannot be used as evidence against the workman and the IO has committed mistake in exhibiting these documents and relying upon the same. Therefore according to the second party the inquiry was not fair and proper and the findings of the IO based on such documents not sustainable. In support of his argument the Ld. Adv. for the second party resorted to Gujarat High Court ruling in *Shantibai Ambalal Patel V/s. Dholka Nagarpalika* 2003 III CLR 1087 (Guj HC). In that case in the departmental inquiry no witness was examined but simply documents were taken on record and thereafter petitioner was asked if he wanted to say anything. Thereafter IO gave his report which culminated in order of dismissal. In the circumstances Hon'ble Court observed that;

"Whatever the allegations made against the petitioner are based on documents may be considered but when the employee has denied the charge and filed the reply denying the charge and explaining defence, then it is burden upon the employer to prove the misconduct against the petitioner by leading proper evidence in departmental inquiry which gives right to the employee to cross-examines such witness. No one was examined on behalf of the respondent Nagarpalika for proving the documents which is relied by the respondent Nagarpalika for proving the charge against the petitioner and therefore in the absence of that evidence, the allegations which has been found to be proved while considering the reply against the petitioner is not proper procedure adopted by the IO and it is contrary to the Principles of Natural Justice."

8. In this respect the Ld. Adv. for the first party submitted that the facts of the case at hand are different than the case referred herein above. In the case at hand the documents are the entries in the books of account in a Bank and under Banking Evidence Act those entries can be read in evidence. Furthermore the workman herein has supported the entries in the books of account by his confessional statement. In the circumstances the ratio laid down in the above ruling is not attracted to the set of facts of the present case. The Id. adv. for the first party further submitted that the strict rules of Evidence Act are not applicable in the departmental inquiry. In support of his argument he resorted to Apex Court ruling in *South Bengal State Transport Corporation Vs. Sapan Kumar Mitra & Ors.* 2006 LLJ 1087 (SC) wherein the Hon'ble Court observed that;

"It is well settled position now that the disciplinary authority or the Inquiry Officer are not Courts and therefore the strict procedure that are to be followed in the Courts may not be strictly adhered to."

9. In short, the documents produced on record in disciplinary proceeding being entries in the books of accounts and ledger books in the Bank, they need not be proved by examining witnesses. Furthermore these entries and the documents on record can be read in evidence without any other proof as the workman himself has admitted the same in his confessional statement. Therefore the argument on behalf of the workman is devoid of merit that the documents produced in the departmental inquiry were not proved by examining the witnesses.

10. The Ld. Adv. also cited another Apex Court ruling in *Workmen Balmadies Estate V/s. Management Balmadies Estate & Ors.* 2008 I CLR 794 wherein the Hon'ble Court observed that;

"It is also fairly well settled that in a domestic inquiry guilt may not be established beyond reasonable doubt and the proof of misconduct would be sufficient. In domestic inquiry all materials which are logically probative including hearsay evidence can be acted upon provided it has a reasonable nexus and credibility."

In this judgement the Hon'ble Court has cited its earlier ruling in *J.D. Jain V/s. Management of State Bank of India & Anr.* 1982 I SCC 143 wherein the Hon'ble Court observed that:

".....confessional evidence and circumstantial evidence, despite lack of any direct evidence was sufficient to hold the delinquent guilty of misconduct and to justify the order of termination that had been passed."

11. On the point the Ld. Adv. also relied upon Allahabad High Court ruling in *Yaar Mohd. V/s. Commissioner Gonda & Ors.* 2003 (97) (FLR) 674. In that case during the course of domestic inquiry employee was not supplied with copy of relevant documents. No witnesses were examined to prove the charges leveled against the employee. In the circumstances Hon'ble High Court observed that;

"The inquiry was conducted by the inquiry officer in clear disregard to the mandatory provisions of the Government Servant Disciplinary Rules, 1999 and the impugned removal order was passed by the authorities in a hurriedly manner which is in violation of the Principles of Natural Justice."

In the circumstances Hon'ble Court held that impugned order of removal was passed in clear violation of principles of natural justice. It is legally not sustainable.

12. In this respect the Ld. Adv. for the first party pointed out that, in that case copies of the relevant documents were not supplied to the workmen therein. Therefore such documents cannot be used against the workman. Furthermore no witness was examined to prove the charges. However the facts in the case at hand are altogether different. The copies of all the relevant documents were given to the workman and the documents produced on record were neither disputed nor challenged by the workman. He has also not challenged the genuineness of those documents. On the other hand the entries in the register produced on record were admitted by the workman in his confessional statement. In the circumstances the Ld. Adv. for the first party rightly submitted that, the ratio laid down in the above ruling is not attracted to the set of facts of the case at hand. In this respect the Ld. Adv. for the first party has resorted to Calcutta High Court ruling in *Workmen ABG Publication Employees union V/s. Ananda Bazaar Patrika Ltd. & Ors.* 199 (4) L.L.N. 934 wherein the Hon'ble Court observed that;

"In a case where document has been admitted in evidence without any objection whatsoever, the party at a later stage cannot question the admissibility of the same unless the same was inherently inadmissible in evidence."

13. The Ld. Adv. for the first party further submitted that when genuineness of the document is not disputed or the documents are admitted there is no need to lead oral evidence to prove such documents. In support of his argument the Ld. Adv. for the first party resorted to Allahabad High Court ruling in *Rajbabu Agnihotri V/s. Labour Commissioner, U.P., Kanpur* 2002 (4) S.C.T. 791 wherein the Hon'ble Court observed that;

"..... since in the present case genuineness of document was not denied, there was no necessity to prove documents by leading oral evidence by the employer."

14. The same principle was laid down by Hon'ble Bombay High Court in *Vasant P. Patil V/s. IIT Powai, Mumbai & Ors.* 2006 I CLR 723 wherein the Hon'ble Court observed that;

"It cannot be laid down as absolute proposition of law that in every departmental proceedings employer is required to lead oral evidence for establishing the charges."

In this backdrop it is clear that, the rulings cited on behalf of the second party are not helpful to him and it cannot be said that there was violation of principle of natural justice.

15. In this respect the Ld. Adv. for the second party submitted that the IO has not supplied the copy of inward dak registered for the period July-September 2003. According to the Ld. Adv. the defence representative had asked for production of this document. The IO also asked the Presenting Officer to make the register scroll available for verification. However when defence representative visited Shahpur Branch those documents were not made available to him as IO sent a fax to the Presenting Officer not to produce any document/register for perusal. The IO has admitted that he directed the Presenting Officer not to allow any inspection of the said register. According to him these registers were not relevant. Therefore Ld. Adv. submitted that as employee was not supplied with the copies of the documents sought for by defence representative, the inquiry report is in violation of Principles of Natural Justice. In support of his argument the Ld. Adv. referred to the above cited Allahabad High Court ruling in the case of Yaar Mohd. (Supra). In this respect the Ld. Adv. for the first party submitted that the documents which neither produced on record nor used in the inquiry proceeding, question of giving copies thereof or giving inspection of such documents does not arise. Those documents for which inspection was sought by the defence representative were thus totally irrelevant as none of these registers were used in the inquiry proceeding. Therefore the ratio laid down in the above ruling is not attracted to the set of facts of the present case. In support of his argument the Ld. Adv. for the first party cited Apex Court ruling in State of Tamil Nadu V/s. Thiru K.V. Perumal & Ors. 1996 LAB. I.C. 2069 wherein on the point of supply of documents to the delinquent the Hon'ble Court observed that;

"Their duty is only to supply relevant document and not each and every document asked for by the delinquent officer/employee."

As the register for which inspection was sought for was neither relied upon the IO nor relevant. Therefore, non-production of the documents does not affect the credibility of inquiry proceeding.

16. The Id. adv. for the second party further argued that non-examination of witnesses and non-production of documents adversely affect the interest of the workman as he could not get the chance to cross examine those witnesses. In support of his argument Ld. Adv. resorted to Apex Court ruling in State of Uttaranchal & Ors. V/s. Kharak Singh 2008 III CLR 1062 wherein the inquiry was not conducted on the basis of well-founded principle for conducting domestic inquiry. In that case there was no Presenting Officer. No witness was examined. Inquiry Officer acted as investigator, prosecutor and also as judge and he also recommended punishment to be imposed. In the

circumstances the Hon'ble Court held that the inquiry was not fair and proper. In this respect the Ld. Adv. for the first party submitted that in the case at hand the inquiry officer has not acted as investigator. So also he has not acted as Presenting Officer. Though no witnesses were examined the IO relied upon the documents on record which were admitted by the workman in his confessional statement. The confessional statement can very well read in the evidence. On the point Ld. Adv. for the first party resorted to Division Bench ruling of Hon'ble Bombay High Court in Dilip Jangannath Sarode & Ors. V/s. Maharashtra Public Service Commission & Ors. 2008 (4) BOM C.R. 20 wherein on the point of confessional statement of the delinquent in para 55 of the judgement Hon'ble Court observed that;

"There have been several judgements of the Supreme Court laying down the law by which this case is covered, that a confession is admissible in disciplinary proceedings and that the result of disciplinary proceedings can be based only upon a confession statement."

17. The Hon'ble Court referred to the following cases of Hon'ble Apex Court:

(1) Kuldeep Singh Vs. State of Punjab & Ors. 1996 (10) SCC 659 (2) Commissioner of Police, New Delhi V/s. Narendra Singh AIR 2006 SC 1800

18. In the circumstances it is clear that the ratio laid down in the Apex Court ruling cited on behalf of the second party is not attracted to the set of facts of the case at hand. On the other hand it is clear that though no witness was examined the inquiry officer has relied upon the confessional statement of the workman supported by the documents on record and the relevant entries in the register. In this back drop I come to the conclusion that no fault can be found out in the inquiry. It was conducted as per the principles of natural justice and as per the procedure prescribed therefor. Thus I hold that the inquiry was fair and proper. Accordingly I decide this issue No. 1 in the affirmative.

Issue No. 2:—

19. It was submitted on behalf of the union that the findings of the inquiry officer are perverse. According to him the documents relied upon were not proved by examining witnesses and the inquiry officer committed mistake in referring those unproved documents. It is further submitted that the IO has also relied on the confessional statement of the workman which he had retracted subsequently. According to the workman his confession was obtained under duress and threat. Therefore inquiry officer made mistake in relying upon the confessional statement. Therefore according to him the findings of the IO are perverse.

20. In this respect the Id. adv. for the first party submitted that the documentary evidence on record, genuineness thereof was not challenged by the workman during the course of inquiry. On the other hand the contents in the confessional statement of the workman are supported by these documents. The confessional statement can very well be used in the departmental proceeding. Law to that effect is well settled as has been observed in the discussion of issue No. 1 herein above. In the circumstances it cannot be said that the findings of the IO are without any evidence or base less. The Id. adv. for the first party in this respect submitted that as findings of the inquiry officer about the misconduct are based on the documentary evidence and confessional statement of the workman, the Tribunal cannot interfere therein. In support of his argument the Id. adv. resorted to Bombay High Court ruling in Tata Informedia Ltd. V/s. Tata Press Employees Union & Anr. Wherein on the point of findings in the disciplinary inquiry the Hon'ble Court has observed that:

"Once a findings in a disciplinary inquiry is based on some evidence, the sufficiency of evidence in proof of the findings lies beyond the scope of scrutiny of the reviewing court. The findings must however be supported by legal evidence."

21. In the case at hand the findings of the IO in respect of guilt of the workman is supported by legal evidence as has been discussed in issue No. 1 herein above. The IO has relied upon the confessional statement of the workman supported by documentary evidence on record. Therefore findings of the IO cannot be called perverse. Accordingly I decide this issue No. 2 in the negative. Thus I proceed to pass the following order:

ORDER

- (i) The inquiry is found to be fair and proper.
- (ii) The findings of Inquiry Officer are not perverse.
- (iii) The parties are directed to argue/lead evidence on the point of quantum of punishment.

Date: 11.10.2013

K.B. KATAKE, Presiding Officer.

नई दिल्ली, 30 दिसम्बर, 2013

का.आ. 114.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) कि धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चंडीगढ़ के पंचाट संदर्भ संख्या 136/2005 को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/12/2013 को प्राप्त हुआ था।

[सं. एल-12012/282/2002-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th December, 2013

S.O. 114.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the Award Ref. No. 136/2005 of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Chandigarh No. II as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India, Babunikitimal Branch, PO: and their workmen, received by the Central Government on 30/12/2013.

[No. L-12012/282/2002-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

PRESENT: SRI KEWAL KRISHAN, Presiding Officer

Case No. I.D. No. 136/2005

Registered on 20.7.2005

Sh. Kewal Krishan, S/o Sh. Mal Ram, R/o Dagdhore, PO: Gurah Slathia, District Jammu (J&K)

....Petitioner

Versus

The Chief Manager, State Bank of India, Samba (J&K).

....Respondent

APPEARANCES:

For the workman : Sh. Arun Batra Adv.

For the Management : Sh. S.K. Gupta Adv.

AWARD

(Passed on 3.12.2013)

Central Government vide Notification No. L-12012/282/2002 IR(B-I) Dated 10.2.2003, by exercising its powers under Section 10, Sub-Section (1) Clause (d) and Sub-Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether the action of the management of State Bank of India, Branch Office, Samba in terminating the services of Sh. Kewal Krishan w.e.f. 21.8.2001 is just and legal? If not, what relief the workman is entitled to?"

In response to the notice, the workman appeared and filed statement of claim pleading that he was appointed on 1.5.1993 as Messenger after conducting an interview by the then Manager Anil Kumar and a Field Officer T.K. Ambardar. He was paid Rs. 500/- per month which was enhanced to Rs. 700/- Per month. He was assigned the work

of maintaining the day book in the year 1994 and was allotted the work of maintaining the schedule Nos. 4 and 5 of the Branch and DD purchase which was done by him till 1997. His salary was refixed at Rs. 1050/- per month in the year 1998. He was also assigned the work of Bank Transfer Scroll which he maintained till his termination. It is further pleaded that in the month of August, 2001, audit was done and the Auditor specifically mentioned that petitioner was working as regular employee of the bank and his work was satisfactory. That he worked as a regular employee and has done local collections from various banks and acknowledged the receipt thereof. That termination of his services is illegal and against the provisions of law. That the order of termination be set aside and he be reinstated in service with all consequential benefits.

Respondent bank filed written reply denying the relationship and pleaded that the petitioner was Canteen Boy appointed by the Local Implementation Committee of the Branch who paid him salary. He has made some entry in the record to create evidence and his services were not terminated by the bank.

In support of his case the petitioner appeared in the witness box and filed his affidavit reiterating the case as stated in the claim petition.

On the other hand the bank examined Mr. D.K. Kaul who filed his affidavit reiterating the case as stated in the written statement.

It was contended by the learned counsel for the workman that petitioner joined the bank on 1.5.1993 and continuously worked for more than seven years when his services were arbitrarily terminated on 21.8.2001 and in order to establish the appointment, the learned counsel pointed out that the workman made entries in the bank record as he used to maintain day book, Schedule No. 4 and 5 and Schedule 63 of the bank and thus he was regular employee of the bank whose service have been terminated arbitrarily and without complying with the provisions of the Act and the order of termination dated 21.8.2001 is liable to be set aside.

On the other hand it was argued by the learned counsel for the bank that petitioner was never employed by the bank and he simply worked as a Canteen Boy under the Local Implementation Committee who used to pay salary and there is no relationship of employer and employee between the parties.

I have considered the respective contentions of the learned counsels.

It is the specific case of the petitioner that he was appointed as a Messenger on 1.5.1993 by conducting an interview but he did not place on record any appointment letter to establish that he was actually appointed as an employee by the bank. Bank is a statutory body and is to

appoint the persons by following a certain procedure but it is nowhere the case of the workman that he was appointed after following any procedure or any appointment letter was issued to him. Being so, it cannot be said that he was an employee of the bank. If certain entries were made in the bank record by him, the same do not ipso facto establish that he was an employee of the bank, more particularly in the absence of any appointment letter.

The learned counsel for the workman relied on Indian Overseas Bank Vs. I.O.B Staff Canteen Workers' Union and another 2000 LAB I.C. 1495 and submitted that even canteen employees are the employees of the bank. I have carefully persued the said authority in that case. Considering the nature and extent of assistance, financial and otherwise in kind, provided by the bank and the fact that bank has under taken the obligation to provide canteen services and canteen workers were listed under a Welfare Fund Scheme of the bank and were eligible for periodical medical checkup and were given the benefits of Provident Fund Scheme and in the circumstances, the canteen workers were held to be employees of the bank. But the present case, it is nowhere the case of the workman that it was the bank who was to provide canteen services to its employees or the bank has given the facilities as provided in Indian Overseas Bank case (supra). Rather the Hon'ble Apex Court in State Bank of India specifically held that the employees of the canteens which runs at various branches by the Local Implementation Committee of SBI are not employees of the bank.

Thus the petitioner cannot claim himself to be an employee of the bank. When it is so, it cannot be said that his services have been terminated by the bank and he is not entitled to any relief. The reference is accordingly answered against the workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 30 दिसम्बर, 2013

का०आ० 115.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार अधिकरण चंडीगढ़ के पंचाट संदर्भ संख्या 669/2005 को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.12.2013 को प्राप्त हुआ था।

[सं० एल-12012/247/98-आईआर(बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th December, 2013

S.O. 115.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 669/2005 of

the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the Industrial dispute between the management of State Bank of India, and their workmen, received by the Central Government on 30.12.2013.

[No. L-12012/247/98-IR(B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

PRESENT: SRI KEWAL KRISHAN, Presiding Officer.

Case No. I.D. No. 669/2005

Registered on 25.8.2005

Sh. Dori Lal, House No. 707/39, Sector 26, Chandigarh.

...Petitioner

Versus

State Bank of India, The Assistant General Manager, State Bank of India, Region IV, Zonal Office, Punjab Sector 17, Chandigarh.

...Respondents

APPEARANCES:

For the workman Sh. Karam Singh.

For the Management Sh. D.V. Mehta.

AWARD

(Passed on 6.12.2013)

Central Government vide Notification No. L-12012/247/98-IR(B-I) Dated 26.2.1999, by exercising its powers under Section 10 Sub-section (1) Clause (d) and Sub Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether the action of the management of the State Bank of India in terminating the services of Sh. Dori Lal w.e.f. 15.9.97 is legal and justified? If not what relief the concerned workman is entitled to and from which date?"

In response to the notice, the workman appeared and filed statement of claim pleading that he was appointed by the Chief Manager, Circle Stationary Department, as Canteen Boy to prepare and serve tea to the employees. His services were also utilized for packing-cum-coolie. Initially he was paid Rs. 300/- per month which were raised to Rs. 750/- per month and was paid by the AGM Office, Admn. Department by issuing cheques in the favour of Local Implementation Committee who used to pay the

workman also by cheque. He was initially appointed on 30.4.1990 and was allowed to continue till 15th September, 1997. Though his services were utilized as Packer-cum-Coolie in the Circle Stationary Department but he was not paid for the said job.

It is further pleaded that space, utensils and fuel for preparation of tea was provided by the bank and the cost of the tea was fixed by the Chief Manager. That workman used to collect the cost of the tea and used to pay to the Secretary, Local Implementation Committee who used to spend the same for the purchase of tea leaves, milk, sugar etc. His services were terminated without complying with the provisions of the Act which is illegal and he is entitled to be reinstated in service with all the benefits.

The management filed written reply pleading that the workman was employed by the Local Implementation Committee who used to pay him and the workman was never an employee of the respondent-management. He was never appointed as Canteen Boy by the management. That the canteen activities at the Branch were managed by the Local Implementation Committee and funds are provided from the Staff Welfare Fund each year/month. That the Chief Manager was an ex officio President of the Committee. That the workman used to collect money for serving tea etc. to the staff. Since the workman was not an employee of the bank, there was no violation of the provisions of the Act.

Parties led their evidence.

In support of its case, the workman examined Babu Ram, Vinod Gupta and Mr. Antony.

Sh. Dori Lal workman filed his affidavit reiterating the case as set out in the claim statement.

Babu Ram has deposed in his affidavit that he used to carry stationary and found the workman in the premises of the respondent bank doing the work of coolie and packing of stationary. To that effect is also the deposition made by Sh. Vinod Gupta.

Mr. Antony is an employee of the respondent and produced the copy of the cheques Exhibit WW3/1 to 39 and further deposed that papers at page No. 57, 58 and 59 are copies of the bills approved for payment by the bank. That the workman was working in the bank for packing and serving tea to the staff.

On the other hand, respondent has examined Sh. R.K. Bhandari and Satyawan who filed their respective affidavits deposing on the lines of the stand taken by the respondents in the written statement.

It was argued by the learned counsel for the workman that the workman was appointed by the Chief Manager, Circle Stationary Department as Canteen Boy and he used to get his salary through cheques and even payment for

fuel for preparing tea was also made to him and since he worked from 30.4.1990 to 15.9.1997, it is proved that he was an employee of the bank. He has further carried me through the statements of the witnesses and submitted that the same also prove that the workman continuously worked with the respondent management as Coolie-cum-Packer and thus it be held that he was an employee of the bank and his services have been terminated illegally.

It may be added that the respondent-bank is a statutory body and have its Rules and Regulations for giving appointment to persons. Nothing has been placed on the file to show that any procedure was followed for employing the workman as employee of the bank. There is nothing to suggest that Chief Manager was the competent authority to make appointment of the workman as a Canteen Boy.

The cheques the copies of which are Exhibit WW3/1 to 39 show that the same were issued by the Local Implementation Committee and not by the bank. The papers at page No. 57, 58 and 59 show that some amount was recommended to be paid on account of fuel charges to the workman but the same do not ipso facto establish that he was an employee of the bank.

The statement of workman, Vinod Gupta and Antony do not establish the workman was employed by the bank at any point of time as much as no appointment letter has been placed on the file.

It is the case of the workman himself that he was employed as Canteen Boy and the respondent bank has taken the stand that he was employed by the Local Implementation Committee and the same gets established from the photocopies of the cheques, discussed above, which were issued by the said Committee showing that it was the Local Implementation Committee who engaged the services of the workman. It is nowhere the case of the workman that it was the duty of the bank to provide canteen services to its employees and the employees of the canteen are governed by the Rules and Regulations of the bank. The Hon'ble Apex Court in State Bank of India and others Vs. State Bank of India Canteen Employees' Union (Bengal Circle) and Others and observed in para 41 of the judgment as follows:—

"That employees the canteens which are run at various branches by the Local Implementation Committees as per the welfare scheme framed by the SBI would not become employees of the Bank as the Bank is not having any statutory or contractual obligation or obligation arising under the Award to run such canteens. Hence, it is not necessary to decide the second question that fresh petition for the same cause was not maintainable in view of the order dated 14.10.1985 passed by this Court in Civil Appeal No. 840 of 1977."

Thus, the workman is not an employee of the bank. It cannot be said that his services have been terminated by

the respondent bank and he is not entitled to any relief. The reference is accordingly answered against the workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 30 दिसम्बर, 2013

कांआ 116.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) कि धारा 17 के अनुसरण में केंद्रीय सरकार स्टेट बैंक ऑफ हैदराबाद प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अहिाकरण हैदराबाद के पंचाट संदर्भ संख्या 10/2007 को प्रकाशित करती है, जो केंद्रीय सरकार को 30.12.2013 को प्राप्त हुआ था।

[सं एल-12012/98/2006-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th December, 2013

S.O. 116.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 10/2007 of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial dispute between the management of State Bank of Hyderabad, and their workmen, received by the Central Government on 30.12.2013.

[No. L-12012/98/2006-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT: Smt. M. VIJAYA LAKSHMI,
Presiding Officer

Dated the 31st day of October, 2013

INDUSTRIAL DISPUTE NO. 10/2007

Between:

Sri J. Vijaya Raju,
R/o H.No. 4-1-168, Ramnagar,
Kothagudem-507101.Petitioner

AND

The Deputy General Manager,
State Bank of Hyderabad,
Gunfoundry, Hyderabad-500 001.Respondent

Appearances:

For the Petitioner: M/s. A. Sarojana, K. Vasudeva
Reddy & S. Srinivas, Advocates

For the Respondent: Sri P.A.V. Bala Prasad, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/98/2006-IR(B.I) dated 29.12.2006 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of State Bank of Hyderabad and their workman. The reference is,

SCHEDULE

"Whether the action of the management of State Bank of Hyderabad, Hyderabad (A.P.) in terminating the services of Sh. J. Vijaya Raju, Casual Worker w.e.f. 20.10.2005 without following the provisions of Section 25-F of the Industrial Disputes Act, 1947 is proper and justified? If not, to what relief the workman concerned is entitled?"

The reference is numbered in this Tribunal as I.D. No. 10/2007 and notices were issued to the parties concerned.

2. Petitioner filed claim statement. Respondent has not filed any counter statement. Petitioner has filed chief examination affidavit and case stands posted for cross examination of Petitioner. At this stage Petitioner filed one I.A. 137/2013 for calling petty cash registers from Respondent.

3. While so, Petitioner's counsel is present and reported that he has no instructions from Petitioner. On last date of hearing he was informed about the letter purported to be written by Petitioner in which it is stated that Petitioner is withdrawing the case. Petitioner's counsel is appraised of the letter. He sought for time to verify and report. Now, Petitioner's counsel reported no instructions from Petitioner.

4. In the circumstances, considering that Petitioner is having no interest in the proceedings, petition is dismissed.

Award passed accordingly. Transmit.

Dictated to Sri J. Vijaya Sarathi, UDC transcribed by him and corrected by me on this the 31st day of October, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 30 दिसम्बर, 2013

का०आ० 117.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) कि धारा 17 के अनुसरण में केंद्रीय सरकार बॉम्बे मर्केंटाइल को-ऑपरेटिव बैंक लिमिटेड प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण नई दिल्ली के पंचाट (संदर्भ संख्या 67/2012) को प्रकाशित करती है, जो केंद्रीय सरकार को 30/12/2013 को प्राप्त हुआ था।

[सं० एल-12025/01/2013-आईआर (बी-1)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th December, 2013

S.O. 117.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), The Central Government hereby publishes the Award (Ref. No. 67/2012) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No.1, New Delhi as shown in the Annexure, in the industrial dispute between the management of M/s Bombay Mercantile Co-operative Bank Ltd., and their workmen, received by the Central Government on 30/12/2013

[No. L-12025/01/2013-IR (B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING
OFFICER, CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO.1, KARKARDOOMA
COURTS COMPLEX, DELHI**

I.D.No.67/2012

Shri Shakeel Ahmed
S/o Sh.Abdul Waheed,
R/o 350/356, Flat No. 6,
Second Floor, Katra Budhan Rai Bazar,
Delhi Gate, Daryaganj,
Delhi.-110002.

.....Workman

Versus

M/s Bombay Mercantile Co-operative Bank Ltd.,
Delhi Branch, 36, Netaji Subhash Marg,
Daryaganj, Delhi.

.....Management

AWARD

A cashier working with Bombay Mercantile Co-operative Bank Ltd. (in short the bank) was operating saving bank account No. 50575 in the bank. From 2004 to 2007, he was working in savings seat of the bank. When balancing of saving accounts was got done, he came to know that there was difference of Rs. 16,38,000.00 in General Ledger and Progressive Ledgers maintained by the bank. When his seat was to be changed in June 2007, he got access to 'SMILE code' opened the system and in back

date he created entry of Rs. 16,38,000.00 in his saving bank account, referred above. He withdrew an amount of Rs. 16,25,000.00 from the said account. He was transferred to Current Accounts seat of the bank. In order to cross tally the General Ledger and Progressive Ledgers of the bank, he opened the system and in back date, viz. 31.12.2001, he had shown that sum as deposited in his saving bank account. When this fraud came a light, he was suspended. On 20.03.2010, he confessed his guilt and deposited a sum of Rs. 17 lakh with the bank, with a view to make loss good.

2. Charge sheet dated 18.08.2000 was served upon him. Domestic enquiry was conducted. Enquiry Officer recorded findings against the cashier. The Disciplinary Authority awarded punishment of 'dismissal from service of the bank without notice' *vide* order dated 31.10.2011. The cashier moved an application before the Conciliation Officer on 23.11.2011, raising his grievances before that forum. On expiry of period of 45 days from the date of moving an application before the conciliation Officer, the Cashier raised his dispute before this Tribunal for adjudication under sub section (2) of section 2A of Industrial Disputes Act, 1947 (in short the Act) without being referred by the appropriate Government under sub-section (1) section 10 of the Act. Since dispute was raised within a period of limitation, as provided by sub-section (3) of section 2-A of the Act, It was registered as an industrial dispute.

3. Claim statement filed by the cashier, namely, Shri Shakeel Ahmed, pleading that he joined services of the bank on 09.01.1996 at its Delhi branch. He rendered services with honesty, dedication and punctuality. Not even a single incident was reported against him, except the alleged fabricated incident of fraud. His last drawn salary was Rs. 16,000.00 per month.

4. Claimant pleads that charge sheet dated 18.08.2010 was served upon him wherein it was alleged that while working at Delhi branch, he misappropriated bank's funds to the extent of Rs. 16,38,000.00 by manipulating and tampering with the entries in books of account/computer and withdrew a sum of Rs. 16,25,000.00 through clearing and thus committed acts prejudicial to the interest of the bank. He presents that a story was concocted by the bank to the effect that a letter was received from the Commissioner of Income tax on 27.08.2009 wherein information was sought regarding deduction of income tax at source on payment of interest exceeding Rs. 10,000.00. Information was supplied by the bank *vide* letter dated 02.09.2009. On scrutiny of interest awarded to various accounts amounting of Rs. 10,000.00 and above, it was noticed that an amount of Rs. 59,000.00 was credited on 06.09.2008 in saving bank account No. 50575. On enquiry, account opening form and specimen signature card of the said account were found missing. Resultantly name and

address of the account holder could not be ascertained. The said account was closed on 27.11.2008. However, on scrutiny of transactions in the aforesaid account, it was noted that four fixed deposit receipts, in the name of the claimant, were transferred in the said account on 21.08.2001. Thus, it came to light that the said account belonged to the claimant. Chequebook was issued in the name of the claimant and Deeba. Subsequently, another cheque book was issued to the claimant, which fact led to confirmation of fact that the said account was opened by him. It was mentioned in the charge sheet that on going through the statement of account, it revealed that there was a credit transfer of Rs. 16,38,000.00 in the said account, on 31.12.2001 and withdrawal of a sum of Rs. 16,25,000.00 on 09.06.2007 through clearing. However, interest ranging between Rs. 2.00 to Rs. 537.00 only was shown credited during the period from 2002 to 2008. Since the account reflected credit balance of over Rs. 16,38,000.00, above transaction was found to be suspicious. M/s Zenith Infotech was consulted for their expert opinion, who confirmed that the said account was modified on three occasions. Charge sheet further proceeds that the claimant had deposited a sum of Rs. 17,00,000.00 by way of cash on 20.03.2010 to make good the loss caused on account of unauthorized and fraudulent transaction. It was also mentioned therein that the claimant confessed his guilt.

5. Allegations, to the effect that saving bank account No. 50575 belonged to the claimant and Deeba, were based on the fact that cheque book was issued in their name on 16.06.2001. As charge-sheet unfolds that the bank came to know that the claimant credited transfer entry of Rs. 16,38,000.00 in that account on 31.12.2001 and the said amount remained in the account till 09.06.2007. There were allegations in the charge sheet to the effect that a sum of Rs. 16,25,000.00 was withdrawn from the account through clearing. However, no document was there in possession of the bank to show as to who opened that account and under whose signatures the account was being maintained. It is also a mystery as to from where amount of Rs. 16,38,000.00 came in the aforesaid account. As per procedure, an account will not be opened without receiving account opening form, authentic documents pertaining to residence of the account holder and his work place. Account opening form is to be attested by an introducer, who must have an account in the bank. The account must be operated by way of depositing money or withdrawing the same through cheques or otherwise. Credit and withdrawal entries are made in various ledgers. When an amount, to be withdrawn, happens to be considerably higher, then the Branch Manager is to verify the particulars of the person withdrawing the amount. In absence of any document, it is difficult to believe that an amount of Rs. 16,38,000.00 was deposited on 31.12.2001 in saving bank account No. 50575, which entry could not be noticed till 2010. These facts make the very basis of the charge sheet unworthy of credence.

6. Claimant proceeds that the bank appointed Shri Anzar Hussain, Advocate, as Enquiry Officer. He moved an application before the Enquiry officer on 08.10.2010 asking him to provide documents to facilitate him to file reply to the charge sheet. He also requested to allow him to bring an advocate to defend in the enquiry. The Presenting officer informed the Enquiry Officer that the account opening form and specimen signature card etc. had been destroyed by the claimant himself. Under these circumstances, the Enquiry officer asked him to inspect the record, instead of supplying the documents. Since the matter was complicated, the claimant was legally entitled to bring an advocate to defend himself. His request, to be defended by an advocate, was not conceded to. However, he was permitted to be defended by Shri Amin Abdul Hamid Sheikh. He denied all allegations made in the charge sheet. The bank was examined Shri Jai Prakash as witness before the Enquiry Officer. At the request of the claimant, Shri Shikoh Salim was allowed to defend him. On conclusion of cross examination of Shri Jai Prakash, he was called upon to produce his defence. In addition to his own statement, he made his written statement of defence. The Enquiry Officer concluded the enquiry and submitted his report dated 15.07.2011. Show cause notice was issued calling upon him to explain as to why punishment of 'dismissal from service' may not be awarded. He filed his reply dated 09.10.2011. Dismissal order dated 31.10.2011 was issued to him.

7. Claimant projects that he was working under Rais Ahmed Siddique, Officer In-charge of the branch. Shri Siddique only was able to have access to SMILE Code, being the final authority of transactions in the bank. The bank failed to produce any document to show specimen signature of the person who opened the account as well as any application for issue of cheque book. It was also not proved as to from where amount of Rs. 16,38,000.00 was transferred in saving bank account No. 50575. The bank also failed to establish as to how account was maintained in different names at different times, as allegedly detected by M/s. Zenith Infotech. It was not made clear as to how the aforesaid transactions remained unnoticed from 2001 to 2008. It is also not proved as to from where a sum of Rs. 17,00,000.00 was deposited in the bank by him it was the duty of the bank to give answers to all these propositions. Enquiry conducted by the Enquiry Officer was not in consonance with principles of natural justice. The Enquiry Officer, being a legal advisor to the bank, was interested to hold the claimant guilty of the charges. He claims that report of the Enquiry Officer is perverse. Since enquiry was conducted in English, he was unable to understand it, being a post graduate in Urdu. Enquiry Officer was biased against him. No legal assistance was provided to him. He projects that the bank failed to prove the charges against him and punishment of dismissal is illegal. He claims reinstatement in service with continuity and full back wages.

8. The bank demurs the claim pleading that the dispute raised by the claimant is not in consonance with provisions of sub-section (2) of section 2A of the Act. Claimant had not moved application before the Conciliation Officer, hence direct dispute, presented for adjudication, was premature and liable to be rejected. Office order was issued on 11.05.2001 detailing therein that the claimant unauthorizedly and illegally credited an amount of Rs. 16,38,000.00 in saving bank account No. 50575 by manipulating entries in books of account/computer in back dates by misusing SMILE password and withdrew Rs. 16,75,000.00 through clearing. During investigation on 20.03.2010, the claimant confessed his guilt. He also deposited a sum of Rs. 17,00,000.00 with the bank to make loss good. Claimant was suspended and charge sheet dated 18.08.2001 was served upon him. Charge sheet served upon the claimant was specific and clear. Shri Anzar Hussain was appointed as Enquiry Officer, who issued notice on 11.10.2010 calling upon the claimant to appear before him. The claimant filed reply to the charge sheet on 16.12.2010, wherein he admitted that in order to make loss good, he had deposited a sum of Rs. 17,00,000 in the bank. He requested the bank not to initiate any criminal or penalty proceedings against him. His request letter was also witnessed by his father in law. The Enquiry Officer granted him reasonable opportunities to defend. He was permitted to cross examine the witness examined by the bank. He, himself, entered in his defence, wherein he admitted his guilt. The Enquiry Officer recorded his findings against the claimant, *vide* report dated 15.07.2011. The Disciplinary Authority served notice on the claimant calling upon him to explain as to why punishment of dismissal from service without notice should not be awarded to him. On consideration of his submissions, punishment of dismissal was awarded to him on 31.10.2011. The bank presents that punishment awarded to the claimant commensurate to his misconduct. Claim statement filed by him deserves dismissal, being devoid of merits, pleads the bank.

9. On pleadings of parties, following issues were settled:

- (i) Whether present direct reference has been filed in contravention of the provisions of sub-section (2) of section 2A of the Industrial Disputes Act?
- (ii) Whether enquiry conducted by the management is in consonance with principles of natural justice and fair play?
- (iii) Whether punishment of dismissal from service, awarded to the claimant, does not commensurate to his misconduct?
- (iv) To what relief, if any, the claimant is entitled to?

10. Issues No. (I) and (II) were treated as preliminary issues.

11. The claimant examined himself to discharge onus resting on him. The bank examined Shri Sultan Farid to prove its stand. No other witness was examined by either of the parties.

12. On hearing Dr. M.Y. Khan, authorised representative of the claimant, and Shri Mohinder Singh, authorised representative of the bank, preliminary issue No. 1 was answered in favour of the claimant, while issue relating to virus of the enquiry was answered in favour of the bank, *vide* order dated 14.05.2013.

13. Arguments on proportionality of punishment were heard at the bar. Dr. M.Y. Khan, authorised representative, advanced arguments on behalf of the claimant. Shri Mohinder Singh, authorised representative, presented facts on behalf of the bank. Written arguments were also filed by the parties. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

Issue No. III

14. In order to assess adequacy of punishment awarded to the claimant, it is expedient to have a glance on charges served upon him. Charge sheet Ex. WW 1/3 enlists charges in the following manner:

"A. Mr. Shakeel Ahmad Abdul Waheed, Code No. 3329, Cashier working at Delhi branch has been placed under suspension *vide* Office order No. 73/STF'IR/1636 dated 11.05.2010. It is decided to hold a domestic enquiry against him in the following matter:

Mr. R.K. Gupta, Commissioner of Income Tax (TDS), New Delhi, *vide* his letter No. CIT(TDS)/Del/T-3(4)/197A/09-10/959 dated 27th August, 2009 addressed to Assistant General Manager, Northern India Region called for information under Section 133(6) of the Income Tax Act, 1961, in the prescribed manner regarding deduction of TDS on payment of interest exceeding Rs. 10,000.00 and above made to any person during financial year 2007-2008 and 2008-2009.

The Assistant General Manager (Northern India Region) advised Officer in charge of Savings Department *vide* his letter No. 34/NI/AGM/SF/1101 dated 2nd September 2009 to furnish requisite information within the stipulated time in compliance thereof.

On scrutiny of interest credited to various accounts of Rs. 10,000.00 and above, it was noticed that an amount of Rs. 59,000.00 was credited on 6th September, 2008 in Savings Bank Account No. 50575. However, since the account opening form and the specimen signature card of the said account was not held on record, the name and

address of the account holder could not be ascertained. The said account No. 50575 was closed on 27.11.2008.

On scrutiny of the transactions in the said account No. 50575, it was observed that proceeds of 4 Fixed Deposit Receipts Nos. 37528, 41043, 42516. and 41836 held in the name of Mr. Shakeel Ahmad Abdul Waheed were transferred on 21st August, 2001, which gave credence to the belief that the said account belonged to Mr. Shakeel Ahmad Abdul Waheed.

On going through the cheque book issue register, it is observed that cheque book bearing Nos. 174711 to 174720 was issued on 16.06.2001 in SB Account No. 50575 in the name of Mr. Shakeel and Deeba and the same was acknowledged having received by Mr. Shakeel Ahmad Abdul Waheed, who has signed having received the same. Subsequently, another cheque book bearing No. 534821 to 534830 was issued to Mr. Shakeel Ahmad Abdul Waheed having acknowledged by him. This confirmed that the said account was opened by Mr. Shakeel Ahmad Abdul Waheed.

On going through the statements of accounts, it is revealed that there was a credit transfer entry dated 31.12.2001 amounting to Rs. 16,33,000.00 in the said SB account No. 50575 and withdrawal of Rs. 16,25,000.00 was made on 9th of June, 2007 through clearing. However, interest ranging between Rs. 2 to Rs. 537 only was applied in the said account during half yearly intervals between the period from 2002 to 2008 even as the account was showing credit balance of Rs. 16,38,000.00. On being suspicious about the transactions in the said account M/s Zenith Infotech were consulted for their expert opinion who confirmed that the said account has been modified on three occasions.

During the Course of investigation on 20th March, 2010 Mr. Shakeel Ahmad Abdul Waheed confessed in writing *vide* his letter dated 20th March, 2010 in Hindi addressed to the Assistant General Manager, Northern India Region, Delhi, having made the said withdrawal by manipulating books of accounts.

Besides he also admitted in the presence of the Assistant General Manager (Northern India Region) having unauthorizedly changed the title of the said SB account No. 50575 from his own name to the name of Mr. Sayed Ali and destroyed the account opening form etc. so as to avoid detection of the fraud.

Mr. Shakeel Ahmad Abdul Waheed deposited Rs. 17,00,000.00 by way of cash on 20th March, 2010 towards his unauthorized and fraudulent transactions committed by him.

B. It is revealed that Mr. Shakeel Ahmad Abdul Waheed had issued a cheque bearing No. 524826 for Rs. 16,25,000.00 from the cheque book issued to him which was presented through clearing on 09.06.2007 by UTI Bank Daryaganj Branch, Delhi (Now Axis Bank).

As per inward clearing list as on 09.06.2007, the title of the account is reflected as Mr. Syed Ahmed against payment of the said cheque through clearing of Rs. 16,25,000.00.

On making enquiries with Axis Bank, it is revealed that Mr. Shakeel Ahmad, Abdul Waheed had opened a Savings Bank account No. 43772 with the said bank on 30.05.2007 with cash of Rs. 5500.00 and deposited the said cheque bearing no. 534826 in clearing for Rs. 16,25,000.00 on 09.06.2007. Apart from this there was a deposit of an amount of Rs. 4,00,000.00 on 20.05.2009, Rs. 4,50,000.00 on 16.06.2000, Rs. 6,00,000.00 in September 2009 and Rs. 90,000.00 on 30.03.2010 in the said account maintained with Axis Bank.

This shows that Mr. Shakeel Ahmad Abdul Waheed manipulated the entries in the SB account No. 50575 and committed misappropriation of funds to the extent of Rs. 16,38,000.00.

Mr. Shakeel Ahmad Abdul Waheed has confessed the unauthorized and fraudulent transactions committed by him *vide* his letter dated 20th March 2010 and deposited Rs. 17,00,000.00 with the Bank towards the unauthorized fraudulent transactions committed by him.

In view of the foregoing, Mr. Shakeel Ahmad Abdul Waheed is charged as under:

"Mr. Shakeel Ahmad Abdul Waheed, Code No. 3329, Cashier, working at Delhi branch committed misappropriation of bank's fund to the extent of Rs. 16,38,000.00 by manipulating and tampering with entries in books of accounts/computer and withdrew an amount of Rs. 16,25,000.00 through clearing, which is an act prejudicial to the interest of the bank."

The inquiry into the aforesaid charge will be held as per the provisions of Memorandum of Settlement dated 15.01.1992 on Service Conditions and Conduct Rules, etc. by the Inquiry Officer appointed by the Bank. The date, time and venue of the inquiry will be intimated to Mr. Shakeel Ahmad Abdul Waheed.

In the meantime, Mr. Shakeel Ahmad Abdul Waheed may submit his written explanation to the charge sheet within 10 days of receipt thereof."

15. In his report, the Enquiry Officer recorded findings against the claimant, which are reproduced thus:

"I have carefully gone through the entire proceedings and the evidence on behalf of the CSE and evidence of the management witness and also perused the entire record and documents. The documents/records exhibit MW1/A(colly) produced during the course of inquiry by the management shows that the CSE has manipulated the entries in the SB account No. 50575 and further the management witness in his statement/evidence MW1/B has proved that the CSE was having access to SMILE

CODE for modification and rectification etc. and the CSE used the same on various occasions, as such there is nothing to disbelieve on the version of the management witness. Further, the CSE also admitted the withdrawal of the amount and the same was deposited with the bank and tendered apology and requested to spare him from any punitive action. Thus, the management successfully proved that CSE manipulated the entries in the SB account No. 50575 and committed misappropriation of funds of the bank to the extent of Rs. 16.38 lakh. I am of the opinion that in view of the aforesaid facts, records and documents and the evidence produced by the management, the charges framed against the CSE *vide* charge sheet ref. No. 73 STF/IR/5238 dated 28.08.2010 stands proved conclusively."

16. Findings, recorded by the Enquiry Officer, make it obvious that the claimant manipulated entry of Rs. 16,38,000.00 in saving bank account No. 50575 in June, 2007 in back date. He withdrew a sum of Rs. 16,25,000.00 through clearing. When fraud came to light, during the course of investigation he confessed his guilt on 20.03.2010. He deposited a sum of Rs. 17 lakh in the bank on that date. His confessional statement, which was recorded by the claimant in his own hand, was witnessed by his father in law. Therefore, it is evident that by manipulating entries in bank account/computer, claimant committed fraud and cheated the bank to the tune of Rs. 16,25,000.00.

17. Punishment of dismissal from service was awarded to the claimant. Question for consideration comes as to whether there are any justifications for punishment of dismissal? It is well settled proposition of law that right of an employer to inflict punishment of discharge or dismissal is not unfettered. The punishment imposed must commensurate with gravity of the misconduct, proved against the delinquent workman. Prior to enactment of section 11-A of the Act, it was not open to the industrial adjudicator to vary the order of punishment on finding that the order of dismissal was too severe and was not commensurate with the act of misconduct. In other words, the industrial adjudicator could not interfere with the punishment as it was not required to consider propriety or adequacy of punishment or whether it was excessive or too severe. Apex Court, in this connection, had, however, laid down in *Bengal Bhatdee Coal Company [1963(1) LLJ 291]* that where order of punishment was shockingly disproportionate with the act of the misconduct which no reasonable employer would impose in like circumstances, that itself would lead to the inference of victimization or unfair labour practice which would vitiate order of dismissal or discharge. But by enacting the provisions of section 11-A of the Act, the Legislature has transferred the discretion of the employer, in imposing punishment, to the industrial adjudicator. It is now the satisfaction of the industrial adjudicator to finally decide the quantum of punishment for proved acts of misconduct, in cases of discharge or dismissal. If the Tribunal is satisfied that the order of

discharge or dismissal is not justified in any circumstances on the facts of a case, it has the power not only to set aside order of punishment and direct reinstatement with back wages, but it has also the power to impose certain conditions as it may deem fit and also to give relief to the workman, including award of lesser punishment in lieu of discharge or dismissal.

18. It is established law that imposing punishment for a proved act of misconduct is a matter for the punishing authority to decide and normally it should not be interfered with by the Industrial Tribunals. The Tribunal is not required to consider the propriety or adequacy of punishment. But where the punishment is shockingly disproportionate, regard being had to the particular conduct and past record or is such as no reasonable employer would ever impose in like circumstance, the Tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice. Law to this effect was laid by the Apex Court in *Hind Construction and Engineering Company Labour* [1965 (1) LLJ 462]. Likewise in *Management of the Federation of Indian Chambers of Commerce and Industry* [1971 (II) LLJ 630] the Apex Court ruled that the employer made a mountain out of a mole hill and had blown a trivial matter into one involving loss of prestige and reputation and as such punishment of dismissal was held to be unwarranted. In *Ram Kishan* [1996 (1) LLJ 982] the delinquent employee was dismissed from service for using abusive language against a superior officer. On the facts and in the circumstances of the case, the Apex Court held that the punishment of dismissal was harsh and disproportionate to the gravity of the charge imputed to the delinquent. It was ruled therein, "when abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of abusive language. No straight-jacket formula could be evolved in adjudicating whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts".

19. In *B.M. Patil* [1996 (11) LLJ 536], Justice Mohan Kumar of Karnataka High Court observed that in exercise of discretion, the disciplinary authority should not act like a robot and justice should be moulded with humanism and understanding. It was assessed each case on its own merit and each set of facts should be decided with reference to the evidence recording the allegation, which should be basis of the decision. The past conduct of the worker may be a ground for assuming that he might have a propensity to commit the misconduct and to assess the quantum of punishment to be imposed. In that case a conductor of the bus was dismissed from service for causing revenue loss of 50p to the employer by irregular sale of tickets. It was held that the punishment was too harsh and

disproportionate to the act of misconduct.

20. After insertion of section 11-A of the Act, the jurisdiction to interfere with the punishment is there with the Tribunal, who has to see whether punishment imposed by the employer commensurate with the gravity of the act of misconduct. If it comes to the conclusion that the misconduct is proved, it may still hold that the punishment is not justified because misconduct alleged and proved is such as it does not warrant punishment of discharge or dismissal and where necessary, set aside the order of discharge or dismissal and direct reinstatement with or without any terms or conditions as it thinks fit or give any other relief, including the award of lesser punishment, in lieu of discharge or dismissal, as the circumstance of the case may warrant. Reference can be made to a precedent in *Sanatak Singh* (1984 Lab. I.C. 817). The discretion to award punishment lesser than the punishment of discharge or dismissal has to be judiciously exercised and the Tribunal can interfere only when it is satisfied that the punishment imposed by the management is highly disproportionate to the decree of the guilt of the workman. Reference can be made to the precedent in *Kachraji Motiji Parmar* [1994 (II) LLJ 332]. Thus it is evident that the Tribunal has now jurisdiction and power of substituting its own measure of punishment in place of the managerial wisdom, once it is satisfied that the order of discharge or dismissal is not justified. On facts and in the circumstances of a case, Section 11A of the Act specifically gives two folds powers to the Industrial Tribunal, first is virtually the power of appeal against findings of fact made by the Enquiry Officer in his report with regard to the adequacy of the evidence and the conclusion on facts and secondly of foremost importance, is the power of reappraisal of quantum of punishment.

21. Power to set aside order of discharge or dismissal and grant relief of reinstatement or lesser punishment is not untrammelled power. This power has to be exercised only when Tribunal is satisfied that the order of discharge or dismissal was not justified. This satisfaction of the Tribunal is objective satisfaction and not subjective one. It involves application of the mind by the Tribunal to various circumstances like nature of delinquency committed by the workman, his past conduct, impact of delinquency on employer's business, besides length of service rendered by him. Furthermore, the Tribunal has to consider whether the decision taken by the employer is just or not. Only after taking into consideration these aspects, the Tribunal can upset the punishment imposed by the employer. The quantum of punishment cannot be interfered with without recording specific findings on points referred above. No indulgence is to be granted to a person, who is guilty of grave misconduct like cheating, fraud, misappropriation of employer's fund, theft of public property etc. A reference cannot be made to the precedent in *Bhagirath Mal Rainwa* [1995 (1) LLJ 960].

22. On turning to facts, one would note that the claimant got opened a saving bank account No. 50575 with the bank. He got access to SMILE Code and made entry of a sum of Rs. 16,38,000.00 in the said account, in back date. Thereafter he withdraw a sum of Rs. 16,25,000.00 from the said account on 09.06.2007 through clearing. Thus it is evident that the claimant manipulated the entry in the aforesaid saving bank account and inflated the money deposited therein. He defrauded the bank to the tune of Rs. 16,25,000.00 by manipulation in the above saving bank account. After withdrawal of the said amount from the aforesaid account, he modified that account with a view to conceal his act. Acts committed by the claimant amount to fraud.

23. Acts of dishonesty or fraud constitute misconduct of serious nature warranting penalty of dismissal. The Apex Court in Tika Ram and Sons Pvt. Ltd. [1960 (1) LLJ 514] ruled that such an employee has no right to remain in service of his employer. Punishment of dismissal is the appropriate penalty for an employee who commits such serious misconduct. In view of these facts, punishment of dismissal from service, awarded to the claimant, commensurate to his misconduct. Issue is, accordingly, answered in favour of the bank and against the claimant.

Issue No. IV

24. Since punishment awarded to the claimant commensurate to his misconduct, he is not entitled to relief of reinstatement in service. No indulgence could be accorded to such an employee who commits fraud, while in service of his employer. Dismissal is the appropriate punishment for such misconduct. Resultantly, I am of the considered view that claimant is not entitled to any relief, muchless the relief of reinstatement in service with continuity and full back wages. His claim statement is discarded. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

DR. R.K. YADAV, Presiding Officer

Dated: 19.11.2013.

नई दिल्ली, 30 दिसम्बर, 2013

का.आ. 118.—औद्योगिक विवाद अधिनियम, 1947, (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बिलासपुर रायपुर क्षेत्रीय ग्रामीण बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 152/92) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.12.2013 को प्राप्त हुआ था।

[सं एल-12012/36/92-आई आर (बी-3)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th December, 2013

S.O. 118.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 152/92) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Bilaspur Raipur Kshetriya Gramin Bank and their workmen, received by the Central Government on 30.12.2013.

[No. L-12012/36/92-IR (B-3)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, JABALPUR

No. CGIT/LC/R/152/92

PRESIDING OFFICER: SHRI R.B. PATLE

Shri Derha Ram Verma,
Post Gram: Sejbahar,
Tehsil Distt. Raipur.

...Workman

Versus

The Chairman,
Bilaspur Raipur Kshetriya Gramin Bank,
Dayalbandh,
Bilaspur.

...Management

AWARD

(Passed on this 10th day of December, 2013)

1. As per letter dated 3-7-92 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/36/92/IR (B-3). The dispute under reference relates to:

"Whether the action of the management of Bilaspur Raipur Kshetriya Gramin Bank in relation to their Cana Branch in not allowing Shri Derha Ram Verma, Sub-Staff to work w.e.f. 20-8-1991 is justified? If not, to what relief the workman is entitled to?"

2. After receiving reference, notice were issued to the parties. Ist party workman filed Statement of claim at Page 3/1 to 3/3. The case of Ist party workman is that he was employed as sweeper cum waterman in Bilaspur Raipur Kshetriya Gramin Bank from 17-12-1980. He continued to work till 8-4-84. Thereafter he was suffering from mental illness. He was receiving treatment from D.K. Hospital, Raipur and could not attend his duties. That he was declared fit for duty on 20-8-91. He submitted medical certificate of his illness. However he was informed in October 1991 that he has abandoned service, he would not be permitted to join duty. Workman submits that he was not served with

chargesheet, he was not given opportunity of hearing. He had completed more than 240 days service prior to his termination. When the termination of his services amounts to illegal retrenchment, Section 25-F of I.D. Act was not complied. That the relative of workman has informed the Manager about his illness and receiving treatment. Despite of it without conducting enquiry, his services are terminated illegally. He was not permitted to join duties since 20-8-91. Workman prays direction to the management to allow him to join duties and consequent benefits.

3. IInd party filed Written Statement at Page 6/1 to 6/3. Claim of workman is totally denied. IInd party denies that the workman was employed by management from 17-12-1980 rather it is submitted that there is no post of sweeper cum waterman as per Staff Regulation. It is denied that workman was suffering from mental illness and receiving treatment in D.K. Hospital, Raipur. It is denied that the management was intimated about the medical certificate. It is denied that management informed workman that he had abandoned service and could not be allowed to work. It is denied that termination order was issued by the management. That workman had not completed 240 days continuous service. Violation of Section 25-F of I.D. Act is denied. The relatives of workman has not informed about mental illness of workman. That workman was engaged as part time daily rated workman as per availability of work in the branch. His services are not covered by Staff Service Regulations. Ist party is not entitled to join duties as claimed by him.

4. IInd party submitted rejoinder at Page 7/1 to 7/2 reiterating its contentions in Written Statement.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of Bilaspur Raipur Kshetriya Gramin Bank in relation to their Cana Branch in not allowing Shri Derha Ram Verma, Sub-Staff to work w.e.f. 20-8-1991 is justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

REASONS

6. The workman is praying directions to the management to allow him to join duties. That his services are terminated in violation of Section 25-F of I.D. Act on the ground that he has abandoned service. The management has denied entire claim of the workman. Workman filed affidavit of his evidence. Workman have stated that he was employed as sweeper cum waterman

w.e.f. 17-12-1980. He was continuously working till 8-4-84. He worked for more than 240 days during each of the calendar year. He suffered from illness and receiving treatment from D.K. Hospital, Raipur from Dr. B.G. Lalwani, G.P. Jethani. that he was declared fit for duty on 20-8-91. He reported for duty but he was not permitted to resume duties. His affidavit covers his contentions in Statement of claim that he received treatment from time to time from Lalwani, Jethani. That intimation about his illness was given to the Bank by his family member. He received letter dated 9-11-98 that no chargesheet was issued to him, neither enquiry was conducted, order of termination was not served on him. From his further evidence, documents Exhibit W-2 to W-5 are admitted in evidence. Document Exhibit W-1 is certificate issued by Branch Manager that workman was working during period 17-12-80 to 8-3-84 as part time daily wages. Exhibit W-2 is Medical Certificate that workman was suffering from the illness and was fit to join his duty from 16-8-90. Exhibit W-3 is certificate issued by Dr. B.G. Lalwani that workman was under his treatment during 21-11-86 to 30-10-87, 1-1-88 to 20-10-88. Exhibit W-4 is medical certificate issued by Dr. Jethani that Ist party workman was under his treatment during 1984 to 86. The evidence of workman remained unchallenged. The management despite of notices sent did not participate in reference. No evidence is adduced.

7. As per document Exhibit W-1 Ist party workman was working in the Bank as part time daily wage waterman cum sweeper from 17-12-1980 to 8-4-84. IInd party has not issued chargesheet to the workman. No enquiry is admitted. The services of workman are not terminated following due process of law. Termination order has not been issued, refusing workman from joining duties without terminating his services is clearly illegal. That workman was suffering from illness after recovery of his mental illness when he joined the work, he could not be refused to join duties therefore action of the management not allowing him to join duties is illegal. For above reasons, I record my finding in Point No. 1 in Negative.

8. Point No. 2-In view of my finding in Point No. 1 that action of IInd party in not allowing workman to join duty is illegal, question arises to what relief the workman is entitled? Workman was working as part time sweeper cum waterman as per Exhibit W-1, his Provident fund was deducted as per Exhibit W-3. Exhibit W-1, W-2 are copies of payment vouchers of the wages. The services of workman are not terminated following due process issuing chargesheet, holding enquiry. As per Exhibit W-6, he was informed that he could not be allowed to join duties. The evidence of workman is silent what work he was doing all those years therefore back wages cannot be allowed to the workman, only relief claimed by workman for direction to the management to allow him to join duty appears justified. Accordingly I hold.

9. In the result, award is passed as under:—

- (1) Action of management of Bilaspur Raipur Kshetriya Gramin Bank in relation to their Cana Branch in not allowing Shri Derha Ram Verma, Sub-Staff to work w.e.f. 20-8-1991 is illegal.
- (2) IInd party is directed to allow workman to join his duties as part time sweeper-cum-waterman but without back wages.

R.B. PATLE, Presiding Officer

नई दिल्ली, 30 दिसम्बर, 2013

कांआ 119.—औद्योगिक विवाद अधिनियम, 1947, (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंदौर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 231/99) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.12.2013 को प्राप्त हुआ था।

[सं एल-12012/63/98-आई आर (बी-1)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th December, 2013

S.O. 119.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 231/98) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of State Bank of Indore and their workmen, received by the Central Government on 30.12.2013.

[No. L-12012/63/98-IR(B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/231/98

PRESIDING OFFICER: SHRI R.B. PATLE

General Secretary,
Daily wages Bank Employees Association,
9, Sanwer Road, Ujjain ...Workman/Union

Versus

Managing Director,
State Bank of Indore,
State Bank of India (After merger),
5, Y.N. Road,
Ujjain ...Management

AWARD

(Passed on this 11th day of December 2013)

1. As per letter dated 15-10-1998 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/63/98-IR(B-I). The dispute under reference relates to:

"Whether the management of Managing Director, State Bank of Indore in terminating Shri Nandkishore Raikwar w.e.f. 4-1-97 and not regularizing him is justified? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Ist party workman filed Statement of claim at Page 2/1 to 2/3. Case of Ist party workman is that he was engaged by Branch Manager Sujalpur Mandi Branch for cleaning work on daily wages from 1-3-89. He was honestly doing said work. He was continuously working in the Bank till 4-3-97. IInd party discontinued him without notice. He was not paid retrenchment compensation. That he had completed 240 days continuous service during each of the year. He is covered as workman under Section 25-F of I.D. Act, he was working more than 8 hours every day. He is not paid retrenchment compensation. Termination of his service is in violation of Section 25-F, G, H of I.D. Act. Principles of last come first go was not followed. He was not allowed to work on vacant post. Permission under Section 33(B) of I.D. Act was not obtained. On such ground, workman is praying for his reinstatement with consequential benefits.

3. IInd party filed Written Statement at Page 6/1 to 6/6. The claim of Ist party workman is totally denied. IInd party submits that the alleged Union is not competent to represent workman. The Union of Ujjain has no authority to represent workman from Indore. IInd party denied all material contentions of Ist party workman that he was continuously working for more than 240 days or he was working for 8 hours every day. IInd party submits that workman was engaged on daily wages temporary employee as per exigency. Workman was intermittently working from 1989 to 1996. He was not continuously working. Workman was paid wages for the working days. He is no regular employee. There was no question of paying retrenchment compensation. The contentions of Ist party workman that his termination from service is illegal for violation of Section 25-F, G, H of I.D. Act are denied. That there were six sanctioned post of sub staff in Sujalpur Mandi branch. There was no need to engage regular employee in the branch. On such grounds, IInd party prays for rejection of the claim.

4. Ist party has submitted rejoinder at Page 6 to 9 reiterating contentions in Statement of Claim.

5. Considering pleadings on record, the points which

arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the management of Managing Director, State Bank of Indore in terminating Shri Nandkishore Raikwar w.e.f. 4-1-97 and not regularizing him is justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to relief prayed by workman.

REASONS

6. Ist party workman is challenging termination of his service for violation of Section 25-F of I.D. Act. IInd party denied material contentions of workman. Affidavit if evidence is filed by workman stating that he was working as peon from 21-11-84. Thereafter he was engaged from 1-3-89 on daily wages. He was paid wages Rs. 10/- per day. Wages were increased time to time to Rs. 35/- per day. That he was continuously working till 1-1-97, till he was discontinued from service. In his cross-examination, 1st party workman says that there was one daftary, 5 peons working in Sujalpur branch. Their names are also stated as Makhanlal Raikwar, Babulal Raikwar, Amar Singh Raikwar, Ramlal Maliya and Shantilal Ahirwar. In his further cross-examination, he says that he was doing cleaning work in the morning. He was paid weekly wages. Wages were Rs. 10/- per day increased to Rs. 35/- per day. He had not appeared for Written Test. He had not submitted application for job. Appointment letters P-1 to P-3 were issued to him. Those appointment letters are for specific period. The evidence of workman is not supported by documents. That he was continuously working document P-1 is appointment for 30 days from 20-9-84 to 19-10-84, P-2 is for period of 40 days, P-3 is for 4 days only. The workman has not examined any such witness. Any documents are not produced. Isolated evidence of the workman cannot be accepted to establish continuous working for more than 240 days. Evidence of Management's witness Krishna Murari is in the nature of denial. He could not be cross-examined. Considering isolated evidence of workman, Ist party workman has failed to prove that workman had completed 240 days continuous service preceding termination therefore violation of Section 25-F of I.D. Act cannot be proved. Therefore I record my finding in Point No. 1 in Affirmative.

7. In the result, award is passed as under:—

- (1) Action of management of Managing Director, State Bank of Indore in terminating Shri Nandkishore Raikwar w.e.f. 4-1-97 and not regularizing him is proper and legal.

(2) Workman is not entitled to relief prayed by him.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 दिसम्बर, 2013

का०आ० 120.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) कि धारा 17 के अनुसरण में केंद्रीय सरकार मध्य रेलवे प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट संदर्भ संख्या 140/96 को प्रकाशित करती है, जो केंद्रीय सरकार को 30/12/2013 को प्राप्त हुआ था।

[सं. एल-41012/6/93-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th December, 2013

S.O. 120.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 140/96) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of Central Railway, and their workmen, received by the Central Government on 30/12/2013.

[No. L-41012/6/93-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/140/96

PRESIDING OFFICER: SHRI R.B. PATLE

Shri Narayan, S/o Sampat,
Shakir Hussain Niwas,
Qr. No. 50, V.V. Giri Ward,
Harda (MP)

.....Workman

Versus

The DRM,
Central Railway,
Bhopal

.....Management

AWARD

(Passed on this 12th day of December, 2013)

1. As per letter dated 10-6-96 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-42012/6/93-IR(B-I). The dispute under reference relates to:

"Whether the action of the management of DRM, Central Railway Bhopal in terminating the services of Shri Narayan Sampat w.e.f. 1-5-86 is justified? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted Statement of claim at Page 3/3 to 3/6. Case of Ist party workman is that he belongs to ST (Mahar). He was engaged as permanent Gangman in Central Railway on 20-5-71 by PWI, Harda. That he was unable to attend his duties from 26-9-85 to 26-4-86. Memorandum was issued to him on 24-4-86 by Assistant Engineer Central Railway, Harda for his absence from duty. That departmental enquiry was conducted against him. He was removed from service from 1.5.86. Ist party workman submits that he had submitted medical certificate for his inability to attend duties from 26.9.85 to 1.5.88. The certificate of mental illness issued by Dr. R.D. Dupare Medical Officer, Mental Hospital Nagpur was submitted by him and enquiry was held. The enquiry is vitiated.

3. It is further submitted that the order of removal from service is illegal and deserves to be quashed. That enquiry is vitiated for following wrong procedure and therefore the prays for his reinstatement with consequential benefits.

4. IInd party filed Written Statement at Page 9/1 to 9/3. The claim of Ist party workman is denied. IInd party did not dispute that Ist party workman was employed as Gangman under PWI Harda, Central Railway. All other contentions of workman are denied. It is denied that workman was suffering from mental illness and as such unable to attend duty. It is denied that workman had submitted certificate of mental illness issued by Medical Officer, Medical Hospital, Nagpur. It is denied that enquiry conducted by management is vitiated.

5. Workman has filed rejoinder at Page 10/1 to 10/3 reiterating its contentions in Statement of claim. He contended that he was suffering from illness, had submitted medical certificate, enquiry was not properly conducted.

6. Considering evidence, may predecessor vide order dated 16.11.09 found enquiry conducted against workman is not proper. The management is permitted to prove misconduct adducing evidence.

7. Considering pleadings and order passed by my predecessor, enquiry conducted against workman is found illegal, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the misconduct alleged against workman is proper? In Affirmative

(ii) Whether the punishment of termination from service of Ist party workman is proper and legal? In Affirmative

(iii) If so, to what relife the workman workman is entitled to?" Workman is not entitled to relief claimed by him.

REASONS

8. The enquiry conducted against workman is found illegal. Management has been permitted to prove misconduct in Court. Management filed affidavit of Shri Mohanlal, S/o Babulal Head Clerk. The witness of the management has stated that the workman was unauthorised absent from 18.9.85 to 18.5.86, the period comes almost 8 months. The workman had not submitted application for leave for said period. That as the matter is 24 years old, MR Sheet is destroyed, Muster roll was brought by the witness, its zerox copy is admitted and marked as Exhibit M-1. The management witness in his cross-examination says that Ist party workman was appointed against permanent post. His pay was paid as per muster. The attendance of Ist party workman was maintained in Muster roll. The workman was appointed on 14.6.85. That workman was not regularly attending his duties. The witness denies that workman has submitted application for leave along with Medical Certificate. The suggestions are denied that the entries in muster register were falsely made marked absence of Ist party workman. Workman has not examined himself. The evidence of management clearly shows that the workman had joined service on 14.6.85. There was no reason for marking his absence from duties. The workman has not adduced any evidence why his absence should be marked, whether he had any enmity with anybody who is marking his attendance. In absence of such evidence, I do not find reason to disbelieve evidence of management's witness. The evidence of management witness is sufficient to prove the unauthorized absence of Ist party workman. Therefore I record my finding on Point No. 1 in Affirmative.

9. Point No. 2- in view of my finding in Point No. 1, the misconduct alleged against workman is proved, the workman has not adduced any evidence. The Medical Certificate issued by Medical Officer, Mental Hospital, Nagpur is not proved. There is no evidence whether he was suffering from mental illness and when he had attended normalcy and was fit to join service. In absence of such evidence, I do not find reason to interfere in the order of dismissal passed by the Disciplinary Authority. Therefore I record my finding in Point No. 2 in Affirmative.

10. In the result, award is passed as under:—

(1) Action of the IInd party DRM, Central Railway Bhopal in terminating the services of Shri Narayan Sampat w.e.f. 1.5.86 is proper.

(2) Workman is not entitled to relief prayed by him.

R.B. PATLE, Presiding Officer

नई दिल्ली, 30 दिसम्बर, 2013

का०आ० 121.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंदौर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचात संदर्भ संख्या 14/2004 को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.12.2013 को प्राप्त हुआ था।

[सं० एल-12012/264/2003-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th December, 2013

S.O. 121.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 14/2004 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of Indore, and their workmen, received by the Central Government on 30.12.2013.

[No. L-12012/264/2003-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/14/2004

PRESIDING OFFICER: SHRI R.B. PATLE

General Secretary,
Daily Wages Bank Employees Association,
9, Sanwar Road,
Ujjain

.....Workman/Union

Versus

General Manager (Operations),
State Bank of Indore,
State Bank of India (After Merger),
Head Office, 5, Yeshwant Niwas Road,
Indore

.....Management

AWARD

(Passed on this 10th day of December 2013)

1. As per letter dated 26.2.2004 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-12012/264/2003-IR(B-I). The dispute under reference relates to:

"Whether the action of the management of General Manager (O), State Bank of Indore in terminating the

services of Shri Mukesh Kumar Rajak w.e.f. 16.1.2000 not regularising him and not paying him bonus is justified? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Ist party workman filed Statement of Claim at Page 6/1 to 6/11. Case of Ist party workman is that IInd party had issued circular dated 29.8.89 not to engage temporary employees. The circulars were issued on 29-8-89, 7-9-89 not to engage sweepers on daily wages. That the workman was engaged on daily wages by Branch Manager B.K. Trivedi from 26-4-94. He was sincerely doing his duties. The wages were increased time to time from Rs. 10/- per day to Rs. 65/- per day. That he was also required to prepare draft and submit for signature of Branch Manager. During 20-4-99 till 30-11-2000. That advice of 30 drafts were not received in Head Office, Indore from Branch Office. The matter was required by Branch Manager Niraj Kumar and it was found that the thefts of drafts were committed. The incident was reported to police on 16-1-01. against him. That his service were discontinued without notice from 16-1-2001. He was not paid retrenchment compensation. That termination of his services is illegal for violation of section 25-F of I.D. Act, that he was working more than 240 days during each of the year. He is covered as workman under Section 25 B of I.D. Act. As his services are terminated without notice, in violation of Section 25-F, G, N of I.D. Act, the workman prays for his reinstatement with consequential benefits.

3. IInd party filed Written Statement at Page 13/1 to 13/13. Claim of workman is total denied. That workman was not employed in the Bank as permanent or temporary employee. Employer Employee relationship does not exists between the parties. That Ram Nagwanshi General Secretary of the Union was dismissed from service from 5-12-2001. He is not competent to represent workman. That Ist party workman was employed as casual employee. He had committed fraud with one customer of the Bank Shri Wahid Khan, proprietor of M/s Universal Electronics. The fraud was committed in the Bank stealing pages of draft book. The incident was reported to Police Station. Workman was in Jail for long period then released on bail. He is not in service of the Bank.

4. That IInd Bank is a statutory corporation incorporated under the State Bank of India (Subsidiary Banks) act, 1959. The recruitment of subordinate cadre is formulated by the rules framed by Government of India. The appointment of messengers, peons etc. is made by Head Office. The Branch manager has no power to make such appointments. Ist party workman had not completed 240 days service. There is no question of termination of his service by the IInd party. Workman was not appointed in the Bank's service. Therefore reference is not tenable. The services of Ist party are not governed by Bipartite Settlement as he is not regular employee.

5. IInd party submits that workman was kept on casual basis for cleaning branch premises, fetching water for 2 hours before opening of the branch and one hour after its close. *i.e.* for 3 hours. However he had committed fraud stealing the pages of the draft books from time to time. Complaint was registered for committing offences punishable under Section 281, 420, 467, 468 and 34 IPC. The criminal case is pending. The Bank suffered loss of Rs. 5,27,090. All other material contentions of workman about his work in the Bank for cleaning work in the Bank are denied. Workman was engaged for cleaning, sweeping work on wages Rs. 10 per day. Workman has not completed 240 days service during any of the year. Therefore he is not entitled to relief prayed by him.

6. Ist party filed Rejoinder at Page 14/1 to 14/2 reiterating contentions in Statement of Claim.

7. Considering pleading on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of General Manager (O), State Bank of Indore in terminating the services of Shri Mukesh Kumar Rajak w.e.f. 16-1-2000 not regularising him and not paying him bonus is justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to reliefs prayed by him.

REASONS

8. Workman is challenging termination of his services for violation of Section 25-F, G. N of I.D. Act. His claim is denied by the management. Workman filed affidavit of evidence. Workman in his affidavit says from 26-4-94 he was working on daily wages. The wages were increased upto Rs. 65 per day. He had completed 240 days continuous service. That he was discontinued from 16-1-01. That he was required to write drafts. The amount in the draft was increased to different amounts. In his cross-examination, workman says he received education upto 8th standard. He was working 2 hours morning, 2 hours evening. He was paid wages Rs. 10 per day. The wages were paid weekly. That appointment letter was not given to him. He had not submitted application for full time post. While he was working in the Bank, the draft was kept in lock. He admits copies of drafts P-4 to P-33 are written in his handwriting. Theft of those drafts was committed. That the drafts was got prepared by clerks from him. Shri Vijay Sagoria, Mohan

Bangde, Katakwar, Ghansham Adiwasi & Ashish Nag were helping him. He says that he was in jail for 3 months then released on bail. That he did not received termination order from Bank. Workman has not proved any documents. That he was continuously working in the Bank for more than 240 days.

9. The management submitted affidavit of evidence of Raju Shukla. Management's witness denies that workman was continuously working in the Bank from 1994 to 2001. His name was not sponsored through Employment Exchange. Workman was not called for interview. Workman is prosecuted in criminal case. Loss of Rs. 5,27,090/- is caused because of fraud committed by workman. The evidence of management's witness in cross-examination shows his affidavit is filed on the basis of documents in office record. Those documents are not produced. He had not discussed with the previous Branch Manager before filing affidavit of evidence. That workman was not serviced with notice, retrenchment compensation was not paid to him as the workman is not regular employee.

10. The burden lies on workman to provide that he worked for more than 240 days in Bank. The said burden is not discharged by cogent evidence. Mere affidavit of evidence cannot be accepted that he had completed 240 days service during any of the year. Therefore workman has failed to establish that he is covered under Section 25(B) of I.D. Act. Consequently he is not entitled to protection under Section 25-F of I.D. Act. Therefore I record my finding in Point No. 1 in Affirmative.

11. In the result, award is passed as under:—

(1) Action of the management of General Manager (O), State Bank of Indore in terminating the services of Shri Mukesh Kumar Rajak w.e.f. 16-1-2000 not regularising him and not paying him bonus is proper.

(2) Workman is not entitled to relief prayed by him.

R.B. PATLE, Presiding Officer

नई दिल्ली, 30 दिसम्बर, 2013

का०आ० 122.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) कि धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंदौर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिकी अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 129/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/12/2013 को प्राप्त हुआ था।

[सं० एल-12012/156/2001-आईआर(बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th December, 2013

S.O. 122.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 129/2001) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of Indore, and their workmen, received by the Central Government on 30/12/2013.

[No. L-12012/156/2001-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/129/2001

Presiding Officer : SHRI R. B. PATLE

General Secretary,
Daily Wages Bank Employees Association,
9, Sanwar Road,
Ujjain

...Workman/Union

Versus

General Manager (Operations),
State Bank of Indore,
State Bank of India (After Merger)
Head officer, 5 Yeshwant Niwas Road,
Indore

...Management

AWARD

(Passed on this 10th day of December 2013)

1. As per letter dated 24-7-2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L- 12012/156/2001/IR(B-I). The dispute under reference relates to:

"Whether the action of the management of State Bank of Indore, Indore in not regularizing the services of Shri Mitthanlal Prajapati even after working for more than 240 days in a calendar year is justified? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices are issued to the parties. Ist party workman filed Statement of claim at Page 3/1 to 3/4. Case of workman is that he was continuously working at residence of Branch Manager Shri S. P. Sandele from 1987. He was doing cleaning and other domestic works, cooking meals honestly. Workman was working the places where Mr. S.P. Sandele, Branch Manager was transferred. He was also working in the branch office at Chachoda. Where Mr. Sandele was transferred. He was

cooking meals. Mr. Sandele had assured him of permanent appointment, his name was registered in Employment office. That correspondence was made for his appointment as permanent employee. However his services were discontinued in 1998 without issuing notice. That termination of his services is illegal. He was not given notice, retrenchment compensation, bonus was not paid to him. On such contentions, Ist party workman through Union Representative Ram Nagwanshi prays for reinstatement with consequential benefits.

3. IInd party filed Written Statement at Page 6/1 to 6/8. Claim of workman is totally denied. IInd party submits that workman has not completed 240 days service preceding his termination. The dispute is not tenable. The workman is not covered under. I. D. Act. It is further submitted that workman was not working in Bank. There is no employer employee relationship. The reference is not tenable. That Union Secretary Mr. Ram Nagwanshi was dismissed from Bank service from 5-12-2001. He is not competent to represent the workman. In view of judgment in AIR 1990 SC-1865 is that Sub Staff cannot be appointed by Branch Manager. The Head Office appoints sub staff following recruitment procedure. The entry of Ist party workman is back door entry. He cannot claim regularization.

4. IInd party further submits that the permanent peons are performing duties of cleaning. The permanent employee are appointed following recruitment process calling the candidates sponsored through Employment Exchange etc. workman was engaged for few hours. His employment came to end. His discontinuation from work is covered under Section 2(00) of I.D. Act, therefore the reference is not tenable.

5. IInd party further submits that daily wager casual employees have no right for absorption in service. In view of the ratio held in other several cases relied IInd party prays that the claim of Ist party workman is not legal.

6. Ist party workman filed rejoinder at page 7/1 to 7/2 reiterating its contentions in statement of Claim.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|---|---|
| (i) Whether the action of the management of State Bank of Indore, Indore in not regularizing the services of Shri Mitthanlal Prajapati even after working for more than 240 days in a calendar year is justified? | In Affirmative |
| (ii) If not, what relief the to workman is entitled to?" | Workman is entitled to relief claimed by him. |

REASONS

8. Statement of claim is not submitted by workman himself rather it is submitted by Shri Ram Nagwanshi claiming to be Union Representative. Mr. Ram Nagwanshi has not produced any resolution authorizing him by Union for representing workman. Membership receipt is not produced. Ist party filed documents. However no care is taken for proving the same. Exhibit W-1 produced by workman is letter issued by the authorities of State Bank of Indore to the Branch Manager for submitting paper relating to Ist party workman.

9. Workman has not adduced evidence in support of his claim. His evidence is closed on 24-1-2012.

10. Management filed affidavit of evidence of witness Shri O.P. Anand, the management's witness has stated that salary register only of permanent employees on roll of the Bank is maintained. Bank does not maintain salary register of Daily Wages casual employees. Management's witness Raj Kishore Sinha in his affidavit of evidence denied the claim of workman that workman was engaged for cleaning work in Chachoda Branch for one hour morning, evening. Ist party workman was paid wages for the work done by him. Workman is not eligible for appointment as regular peon. In his cross-examination management's witness says workman was not paid retrenchment compensation, no notice was issued to him as he was not regular employee. Workman has not adduced any evidence that he was working for more than 240 days preceding termination of his services therefore the claim of Ist party workman is not substantiated. For above reasons, I record my finding in Point No. 1 in Affirmative.

11. In the result, award is passed as under:—

- (1) Action of the management of State Bank of Indore, Indore in not regularizing the services of Shri Mitthanlal Prajapati even after working for more than 240 days in a calendar year is proper.
- (2) Workman is not entitled to relief prayed by him.

R.B. PATLE, Presiding Officer

नई दिल्ली, 30 दिसम्बर, 2013

का.आ. 123.—औद्योगिक विवाद अधिनियम, 1947 1947 का 14 की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 113/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/12/2013 को प्राप्त हुआ था।

[सं. एल-12012/52/2005-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th December, 2013

S.O. 123.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 113/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India, and their workmen, received by the Central Government on 30/12/2013.

[No. L-12012/52/2005-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, JABALPUR**

No. CGIT/LC/R/113/2005

PRESIDING OFFICER : SHRI R.B. PATLE

General Secretary,
Daily Wages Bank Employees Association,
9, Sanwer Road,
Ujjain (MP)

....Workman/Union

Versus

Deputy General Manager,
State Bank of India,
Zonal Office, Hamidia Road,
Bhopal (MP)

... Management

AWARD

(Passed on this 11th day of December 2013)

1. As per letter dated 4-10-2005 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/52/2005-IR(B-I). The dispute under reference relates to:

"Whether the action of the management of Dy. General Manager, State bank of India, Bhopal in terminating the services of Shri Veer Singh w.e.f. 16-10-99 is justified? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Ist party workman filed statement of claim. The

case of Ist party workman is that he had worked for 73 days as peon/messenger in Bank during 13-9-85 to 25-11-85. That as per settlement dated 17-11-87, he was called for interview on 23-1-90. He was successful in the interview. His name was included in the panel list. After 3 years and 6 months, he was engaged as messenger from 16-2-97 but again he received letter dated 28-1-97 informing that he was interviewed earlier. It is necessary to be interviewed.

3. To be precise, Ist party workman further submits that on 2-7-93, he was called in chamber and informed about termination of his services, he was paid retrenchment compensation. Workman submits that he was continuously working in the bank for more than 6 1/2 years. His services are illegally terminated. Employees junior to him are continued in service. Therefore termination of his service is illegal. On such ground, workman prays for reinstatement with consequential benefits.

4. IInd party filed Written Statement at Page 15/1 to 15/17. The claim of Ist party workman is totally denied. It is submitted that Shri Ram Nagwanshi is Secretary of Union. He has not competent to represent workman. Ram Nagwanshi is dismissed from service. That workman was engaged as per exigency on contract basis. His engagement ended at end of the day. His discontinuation of workman is covered under Section 2(o)(bb) of I.D.Act. It does not amount to illegal retrenchment. IInd party denied that workman completed 240 days continuous service. The IInd party has narrated the settlement dated 17-11-87 providing opportunity to the temporary employees for appointment. Workman were also given opportunity as per settlement. Workman was called for interview on 23-1-90 as he had worked for 73 days. IInd party submits that workman is not entitled for appointment as messenger. His appointment was not made following recruitment process. The select list had expired on 31-1-97. Ist party workman was never appointed as permanent messenger. As per settlement of 1987, Waiting List was prepared. Workman was paid retrenchment compensation Rs. 6834/- and one months pay Rs. 2877/- though he had not completed 240 days continuous service. Ist party was discontinued after payment of wages on account in lieu of notice and retrenchment compensation. Therefore termination of his service is legal. On such ground, IInd party prays for rejection of claim.

5. Workman has filed rejoinder at Page 17/1 to 17/6 reiterating his contentions in Statement of Claim.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|---|---------------------|
| (i) Whether the action of the management of Dy. General Manager, State Bank of India, Bhopal in terminating the services of Shri Veer Singh w.e.f. 16-10-99 is justified? | In Negative |
| (ii) If not, what relief the workman is entitled to?" | As per final order. |

REASONS

7. Ist party workman is challenging termination of his services for violation of I.D.Act. that workman was interviewed in 23-1-90. He was engaged as messenger in 1993, The services were terminated in the year 1999. IInd party denied that workman had completed 240 days continuous service. Workman filed affidavit of his evidence. He has stated that he worked for 73 days as Messenger in the Bank from 13-9-85 to 25-11-85. As per settlement of 1987, he was called for interview. The interview was held on 16-1-90. He was called for personal interview. He was selected in the list. He was working in Vindyanchal branch Bhopal from 2-7-93. His services were terminated from 16-10-99. Amount of Rs. 11,511/- was paid to him. He was not served with notice. In his cross-examination, workman says his name was not sponsored through Employment Exchange. He had not appeared for Waiting List prior to 13-9-85. Appointment letter was not given to him. He admits that he was called for interview on 23-1-90 as he had worked for 73 days in the Bank. He had worked for 2327 days during 1993 to 1999. Management's witness filed affidavit of his evidence. The witness of the management also stated that during 1993 to 1999, workman worked for 2327 days. It is clear from evidence of management's witness that workman had completed more than 240 days continuous service preceding his termination. Workman admits receipt of Rs. 11,511/- before termination of his services. Management's witness has also stated payment of retrenchment compensation and notice pay. However Section 25-F of I.D.Act provides—

"One months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice" Section 25-G provides for retrenchment of last person employed in that Category."

8. The pleadings and evidence of IInd party are silent about preparation and displaying such list on the notice board. Thus the retrenchment of Ist party workman is in violation of Rule 77 of the Industrial Dispute (Central Rules), 1957. The documents produced on record. Exhibit W-1 is letter issued from Desk Officer, W-2 shows workman worked for 73 days, W-3 notice published by the Bank inviting applications. The advertisement is clear that the Waiting List would be valid till 1992. The documents Exhibit W-4 is

about change of date of interview. Exhibit W-5 is that the interview would be conducted on 19-2-97 instead of 16-2-97. As per Exhibit W-6, Ist party workman was informed that it was not necessary for him to attend interview. Documents Exhibit W-7 to W-11 are not relevant for deciding legality of termination of services. At the time of argument, learned counsel for IInd party produced copies of settlement. The settlement dated 17-11-87 deals with different category of employees to be considered for permanent appointment. Annexure 6 Page 28 clearly shows that temporary appointment were to be made only from the existing panels. The list of the selected candidates is produced by learned counsel. Ist party workman is appearing at Sl. No. 478 whereas candidates found suitable in the list are appointed only upto 147. The settlement is clear that the selected candidates were in the Waiting List. As per Advertisement the Waiting List was valid till 1992. The period was extended from time to time till 31-3-97. The selection does not give right to be appointed.

9 Learned counsel for IInd party relies on plenty of cases.

In case of Shankarsan Dash versus Union of India reported in 1991(3) Supreme Court Cases 47. Ratio was held that candidates included in merit list has not right to appointment even if vacancy exists.

In case of State of Haryana versus Subash Chander Marwaha and others reported in 1974(3) Supreme Court Cases 220. Their Lordship dealing with Government appointing only seven candidates from the top with a view to maintain high standard of competence. Whether Appearance of candidate's name in the list entitles him to appointment. Their Lordship held mere entry in the list in the name of candidate does not given him right to be appointed.

In case of Punjab State Electricity Board and others versus Malkiat Singh reported in 2005(9) Supreme court Cases 22. Their Lordship dealing with right of appointment. The policy decision providing employment to affected persons whose land has been acquired, their Lordship held the post involved having been created long after such policy decision and subsequent to the change made therein, the question of respondent seeking appointment to the said post pursuant to the said policy decision did not arise."

10. On the point of violation of Section 25-F of I.D. Act reliance is placed on ratio held in

"Case of Krishna Bhagya Jala Nigam Limited versus Mohammed Rafi reported in 2006(9) Supreme Court Cases 697. Their Lordship held burden of proof of working continuously for period of 240 days relief on the workman.

In case of Bharat Sanchar Nigam Limited and others versus Abhishek Shukla and another reported in 2009(5)

Supreme Court Cases 368, their Lordship did not find any error in the judgment observing that the ordinarily life of such panel is one year as has been observed in case of Girdhari versus State of Rajasthan.

In present case, life of selected list was initially till 1992. The life of list selected was extended till 31-3-97. Workman has not adduced evidence regarding existing vacancy or any other employee appointed from the selected test, therefore workman has no case on that ground. Violation of Settlement of 17.11.87 is not established.

11. Rule 77 under Industrial Dispute Central Rules 1957 provides—

"Employer shall prepare a list of all workmen in the particular category from which retrenchment is contemplated arranged according to the seniority of their service in that category and cause a copy thereof to be pasted on a notice board in a conspicuous place in the premises of the industrial establishment at least 7 days before the actual date of retrenchment."

As discussed above, though retrenchment compensation was paid to the workman, IInd party has not prepared list and therefore retrenchment of workman is illegal for violation of Rule 77 of I.D. Central Rules 1957. For above reasons, I record my finding in Point No. 1 in Negative.

12. Point No. 2- In view of my finding in Point No. 1, question arises whether workman is entitled for reinstatement with full back wages. The workman was called for interview and his name was in Waiting List. The workman was continuously working from 93 to 99. His retrenchment is illegal for non-compliance of rule 77 discussed above. Persons similarly situated are not appointed by the bank therefore the workman cannot be reinstated. His claim for full back wages cannot be accepted. In my considered view as retrenchment is illegal for violation of Rule 77, reasonable compensation would be appropriate. Considering the period of working, compensation Rs. One Lakh would be appropriate. Accordingly I record my finding in Point No. 2.

13. In the result, award is passed as under;

- (1) Action of the management of Dy. General Manager, State Bank of India, Bhopal in terminating the services of Shri Veer Singh w.e.f. 16.10.99 is illegal.
- (2) IInd party is directed to pay compensation Rs. 1 lakh to the workman Shri Veer Singh.

Amount as per above order shall be paid to workman within 30 days. In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 दिसम्बर, 2013

कांआ 124.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 194/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.12.2013 को प्राप्त हुआ था।

[सं एल-12012/664/98-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th December, 2013

S.O. 124.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 194/99) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India, and their workmen, received by the Central Government on 30.12.2013.

[No. L-12012/664/98-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-COM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/194/99

Presiding Officer : Shri R. B. PATLE

Shri Phoolchand Sonkhare,
State Bank of India Staff Congress,
5/235, Pragati,
State Bank Staff Colony,
Vikasnagar,
Jabalpur (MP)

.....Workman

Versus

Branch Manager,
State Bank of India,
Kamla Nehru Branch,
Jabalpur (MP)

.....Management

AWARD

(Passed on this 29th day of November 2013)

1. As per letter dated 5.5.99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per notification No.

L-12012/664/98-IR(B-I). The dispute under reference relates to:

"Whether the action of the management of State Bank of India in not giving regular appointment to Shri Phool Chand Sonkhare, part time safai karmachari as per Ministry of Finance Circular No. 102/4/1/90 SCT (B) Dt. 16-4-90 is legal and justified? I not, to what relief the said workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party workman filed Statement of Claim at Page 3/1 to 3/3. The case of workman is that he was working as sweeper in IInd party Bank from 17.5.92 in Kamla Nehru Bank, Jabalpur. That certificates were issued appreciating his services in 1994, 95, 96. That the building of Kamla Nehru branch consist of 3500 sq ft. that he was working more than 36 hours in a week as sweeper. The work is extracted from him as sweeper, waterman. He claims that he should have been paid full pay of Sweeper for the work extracted from him. However he is paid only Rs. 650 per month. The regular sweeper is paid Rs. 3600 per month. The act of IInd party is illegal.

3. Workman further submits that IInd party violates principles of equal pay for equal work as per Section 39(d) of the Constitution. That since 17.5.92, he is working more than 240 days during each for the calendar year. He is not appointed as permanent sweeper though the post is vacant. He prays for regularization of his services as per Circular Dated 24.1.84, 7.11.84, 18.2.97. He also submits that he is covered under Desai Award, Sastri Award and entitled to wages prescribed under those awards. On above ground, workman is praying for regularization of his services and salary as regular employee.

4. IInd party filed Written Statement at Page 8/1 to 8/6. IInd party submits that workman was engaged for 1-2 hours a day for cleaning work of the branch premises or contract rate on daily wages from August 1992 with certain breaks. That he was paid wages as per contract for the work performed by him. IInd party denied that workman was continuously working for more than 240 days during any of the year.

5. IInd party submits that the workman was paid Rs. 30 per day which were increased from time to time. Minimum wages were paid to him. Workman performed job at his choice. The management of IInd Party has no control over him. After performing his job, Ist party workman is free to execute other job at any other place. Person seeking employment in Bank has to go through the prescribed procedure for appointment. The employees undergoing recruitment process are entitled for appointment as regular employee. Engagement of workman was not regular neither it is according to the rules and regulations. That only Regional Manager has power to appoint sub staff. Workman was engaged by Branch Manager without having

authority. That the person engaged by daily wages starts at morning and ends with end of the day. That as workman was not engaged as permanent employee, he is not entitled for regularization. That the person who is engaged purely on temporary basis on stop gap arrangement without following process is not right to be appointed permanently. If Ist party workman is regularized, it may be without proper qualification, without passing competition for appointment. Such claim cannot be allowed.

6. That as per letter dated S/36 dated 6.7.99, workman had appeared for interview but he was not selected for regular post. Therefore workman is not entitled for regular appointment. All other adverse contentions of workman are denied. It is submitted that workman was engaged purely on daily wages without following proper procedure. Management had decided to held interview. One post of sweeper cum farrash on full wages and another post of sweeper cum farrash on 3/4th wages as per circular dated 28.6.99. The workman was sponsored by concerned branch. Though he appeared for interview he was not selected. That workman cannot claim wages of permanent sweeper Rs. 3600 per month. On such contentions IInd party denies the relief prayed by workman.

7. Workman filed rejoinder at Page 9/1 to 9/3. He had reiterated contentions in his statement of claim. He has pleaded that he was working in the branch from 10.30. AM to 3 PM. He had completed 240 days service during each of the year. Work of messenger, waterman was also extracted from him. However he was denied wages of regular employee.

8. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of State Bank of India in not giving regular appointment to Shri Phool Chand Sonkhare, part of time safai karmachari as per Ministry of Finance Circular No. 102/4/1/90 SCT(B) Dt. 16.4.90 is justified?	Denial of regular employment to the workman in violation of Bipartite settlement dated 20.2.97 and other circular is illegal.
(ii) If not, what relief the workman is entitled to?"	As per final orders.

REASONS

9. As per the terms of reference, the denial of regular appointment to Foolchand in violation of Ministry of Finance Circular No. 102/4/1/90 SCT(B) Dt. 16.4.90 is referred for adjudication, the copy of said notification is not received alongwith reference order. Workman has produced

document. Letter dated 16.1.2003 from Director of Appellate Authority, Government of India, Ministry of Finance. The letter finds that copy of letter dated 16.4.90 was not traceable to CPIO. The copy of document annexed with said letter finds circular relating to appointment of persons holding post of sweeper, Farrash etc. as peon relaxation of educational qualifications etc. As per para 5.13, 25% of the vacancies accruing in the Peon's Cadre should be reserved for being filled by transfer from Full Time Sweepers, Farashes who have put in minimum of 5 years. Next Para provides for the purpose of direct recruitment of the post who may possess elementary literacy and give proof of ability to read either English or Hindi or regional language, it would be necessary to hold a simple written test. The claim of workman is not for the post of peon through the post of sweeper/farrash etc. therefore the document produced does not advance claim of the workman.

10. Workman filed affidavit of his evidence. In his affidavit, he has stated that he is working as sweeper in the branch from 17.5.92 continuously. His services are not regularized. That he had completed 240 days continuous service during each of the year. In his cross-examination, workman says that he was working for 2 hours in the Bank. He was engaged for cleaning floor and bathroom. He was initially paid Rs. 10 per day and Rs. 90 per day at the time his evidence was recorded. That he was called for interview. He was selected but his name was not included in considering the seniority.

11. Management's witness Shri K.P. Dubey in his evidence on affidavit has stated that worker was engaged for 1-2 hour a day for cleaning branch premises on contract rate from August 1992 with certain break. Workman never completed 240 days continuous service during any year. The workman was not working as permanent employee against sanctioned post. Workman was paid wages Rs. 35 per day. That appointment in Bank is covered by statutory rules and regulations. The persons seeking employment in Bank has to go through the employment procedure. Only such employees are entitled for regular appointment. Workman was not issued appointment order as he was not appointed against sanctioned post. He was not sponsored through Employment Exchange. In his cross-examination, management's witness says since 1992 workman is working as sweeper on daily wages for 1-2 hours in a day. No other work is extracted from him. Except for holidays and Sunday, workman was working through the year. He was initially paid Rs. 10 per day and presently paid Rs. 90 per day. Suggestion is denied that workman was working from 10.30 PM to 4.30 PM The service of workman are denied. That Attendance Register was not maintained in the branch Kachha Register was maintained. His bills were not checked by other person. That for permanent appointment, application of 1st party workman was received. The proposal for regularization was submitted to the Head office.

12. Though the terms of reference relates to letter dated 16.3.90, the claim of workman cannot be restricted to said letter only. The letter is not received along with reference order. Bipartite settlement Exhibit W-I dated 20.2.97 is produced. Said Bipartite Settlement provides—

"The Management Representatives stated that the interviews of daily wagers/casual labour eligible to be considered for permanent appointment will be over shortly and those found suitable for appointment will be empanelled categorywise as has been done in the case of temporary employees. Para-2(i) provides—

- i. All temporary employees interviewed and found suitable for permanent appointment have already been empanelled/wait listed. The waiting lists maintained at the Zonal Offices will be thoroughly scrutinized by the authorities concerned and ensured that their empanelment is category-wise and in the manner envisaged in the settlements.
- ii. Similarly as daily-wagers/casual labour interviewed and found suitable for permanent appointment will be empanelled/wait listed category-wise and in the manner envisaged in the settlements.
- iii. Both the panels/wait-lists will be merged in their respective categories and a combined waiting list will be prepared. Where a temporary employee and a daily wager/casual labour stand on equal footing the former will be wait listed above the later.
- iv. Before offering appointments to the candidates waitlisted in the manner aforesaid, conversion of non-messengers as messengers and part time employees on full time basis will be completed in the manner laid down in terms of Staff Circular No. 69 of 1990."

Bipartite settlement dated 27.10.88, 9.1.91 provides absorption of temporary employee in subordinate cadre in Bank's service. That daily wagers who will be considered for a chance for permanent appointment in the bank's service. Clause III provides with educational qualification. At the time of appointment, they should have been within the age limit of 18 to 26 years and possess educational qualification of less than matriculation. It also provides for relaxation of age in case of daily wagers at the time of initial temporary employment. Pleadings of workman as well as evidence of management's witness shows that workman was called for interview in 1999. Workman says that he was selected but name did not appear in the list because of seniority. Copy of letter dated 8.11.90 is produced on record for absorption of sweeper/farrash on the post of waterman, messenger etc. 25% post are earmarked for such category. Such candidates must be able to read English, Hindi and minimum Educational Qualification should be 8th standard.

13. That workman has produced Exhibit M-1 to M-6 which are the vouchers about payment. Document Exhibit M-7 is letter issued from Asstt. General Manager dated 29.5.2001 the tabulation chart of the candidates interviewed for permanent part time sweepers is forwarded. In document Exhibit M-14 name of 1st party workman is appearing at Sl. No. 19. He was not selected. His total marks are 31. His educational qualification is show 7th standard. Date of birth is 4.7.1969. Selected candidate at Sl. No. 20, his educational qualification is 5th standard, date of birth is 7.7.67, total marks is 46. Other selected candidate at Sl. No. 21 Raju Balmik, educational qualification is 7th standard. Next selected candidate at Sl. No. 24 is Subash Devak, educational qualification is shown as 8th standard along with other details. Document Exhibit M-2 shows that qualification for sweeper/farrash candidates should be 7th pass, age limit should be 18 to 31 years for General Category. Thus candidate at Sl. No. 20 Gopal Balmik selected was not fulfilling educational qualification. Those documents clearly shows that the management is not following the prescribed norms. It is appointing candidates of its choice and benefit of Bipartite Settlement dated 20.2.97 and other circulars is denied to the workman.

14. The evidence on record shows that workman is working since 1992 as per Bipartite Settlement, he is entitled for absorption as permanent sweeper/farrash but said benefit is denied to him. As discussed above, other candidate is shown favour and though the candidate at Sl. No. 20 is not fulfilling educational qualification he was selected.

15. Learned counsel for 2nd party management relies on bunch of citations.

"In case of M.P. State Agro Industries Development Corporation Ltd. and others versus Shri S.C. Pandey reported in 2006 (2) Supreme Court Cases 716, their Lordship dealing with Casual Labour/Temporary employee right to regularization held only because a temporary employee completes said period of services, that by itself would not confer any legal right upon him to be regularized in service."

"In case of M.P. Housing Board and another versus Manoj Shrivastava reported in 2006 (2) Supreme Court Cases 702. Their Lordship dealing with casual labour/temporary employee, daily wager status held a daily wager does not hold a post or derive any legal right in relation thereto, unless he is appointed (1) against a duly sanctioned vacant post, and (2) upon following the statutory law operating in the field. If an appointment is made in contravention of either (1) or (2), such appointment would be void."

The facts of present case are different. Merely working on daily wages as sweeper/farrash by workman would not get right for regularization but 1st party workman cannot be denied benefit of Bipartite Settlement dated

20-2-97. IInd party has selected candidates who was not holding required educational qualification. Candidate at Sl. No. 20 was selected though the prescribed qualification was 7th standard. The workman was discriminated.

Reliance is also placed on ratio held in—State of Karnataka versus M.L. Kesari and other reported in 2010(9) Supreme court Cases 247. Their Lordship dealing with regularization of casual labour/daily wager Adhoc employee. In context of exception contained in Para 53 of Umadevi's case 2006(4) SCC. 1. Their Lordship held appointments of qualified persons made against sanctioned posts without following process of open competition are irregular appointments. As against this, appointments made not against sanctioned posts or appointments of unqualified persons are illegal appointments.

In present case, it is not case of IInd party that appointment of 1st party of daily wages is illegal. Bipartite Settlement dated 20-2-97 provides regularization for daily wagers, sweeper. Therefore the ratio in present case cannot be applied to case at hand. For the same reasons, cannot be relied in case of National Fertilizers Ltd. and another versus Somvir Singh reported in 2006(5) Supreme Court Cases 493.

16. The evidence on record shows that the workman is denied benefit of Bipartite Settlement dated 20-2-97 though he was called for interview. Candidate at A1.No.20 was not fulfilling the qualification was selected and the workman was not considered. The instructions for absorption of temporary employee in subordinate cadre as per Bipartite Settlement dated 20-2-97 were not following by IInd party.

17. Though reference is made only in respect of claim for regularization as per circular of Finance Department dated 16-4-98, said circular is not received along with reference order. The benefit of Bipartite Settlement discussed above cannot be denied to workman. IInd party has not properly implemented Bipartite Settlement as discussed above. Benefit is denied to the workman. Therefore I record my finding on Point No. 1 in Negative.

18. In the result, award is passed as under:—

- (1) Denial of regular appointment to Shri Phool Chand Sonkhare for the post of sweeper is not proper.
- (2) IInd party is directed to consider the claim of workman for the post of permanent sweeper as per Bipartite Settlement dated 20-2-97, 27-10-88, 9-1-91 and as per Staff Circular No. 50/91 within 3 months.

R.B. PATLE, Presiding Officer

नई दिल्ली, 30 दिसम्बर, 2013

का०आ० 125.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ

इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट संदर्भ संख्या 121/88 को प्रकाशित करती है, जो केंद्रीय सरकार को 30/12/2013 को प्राप्त हुआ था।

[सं० एल-12012/289/88-डी-3(ए)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th December, 2013

S.O. 125.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 121/88 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India, and their workmen, received by the Central Government on 30/12/2013

[No. L-12012/289/88-D-3(A)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/121/88

PRESIDING OFFICER: SHRI R.B. PATLE

Shri Shyam Sunder Agrawal,

S/o Shri Babulalji Agrawal,

Talab Mohalla,

Near Mata Mandir, Itarsi,

...Workman

Versus

Regional Manager,

State Bank of India,

Region-II, Regional office,

Chhola Road,

Near Bus stand,

Bhopal

...Management

AWARD

(Passed on this 15th day of November 2013)

1. As per letter dated 10-11-88 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No.L-12012/289/88-D-3(A). The dispute under reference relates to:

"Whether the dismissal of Shri S.S. Agrawal, Dy. Head Cashier, State Bank of India, Khargone by the Regional Manager, SBI Bhopal is justified or not? If not, to what relief the workman is entitled for?

2. After receiving reference, notices were issued to the parties. Ist party workman filed Statement of Claim at

Page 3/1 to 3/4. Case of Ist party workman is that he was appointed as cashier cum clerk in IInd party Bank on 2nd February 1974. On probation of six months, his services were confirmed on 4-12-1974. That he was performing duties of clerical nature in the Bank. He had no power to grant leave or punish any employee. He is covered as workman under I.D. Act. that on 14-6-85, IInd party Bank issued chargesheet. The charges alleged against him were-(1) doing wrong signature on the counter voucher of Shri Brijmohan S/o Shersingh. (S.B.A/C No. S.847 for Rs. 4500), (2) false identification in the matter of withdrawal of Shri Leeladhar Agrawal (S.B.A/C No. L-257). That he has submitted reply to the chargesheet, enquiry was held against him. It is submitted that the deposition of witnesses clearly shows that charges were not proved. Enquiry Officer was biased. He went beyond charges and imputed intention of fraud against him. No reasonable man could come on such findings. That the punishment based on such findings is uncalled, harsh. That findings of Enquiry officer are perverse. That handwriting expert was not produced for cross-examination. principles of natural justice were followed. Expert's testimony cannot override direct evidence.

3. It is submitted that Disciplinary Authority with prejudice passed order of terminating his services without applying mind. That his appeal was dismissed without applying mind. On such ground, he prays for reinstatement with consequential benefits.

4. Management of IInd party filed Written Statement at page 4/1 to 4/4. IInd party did not dispute that the workman was appointed as clerk cum cashier, it was not disputed that workman is covered under I.D. Act. IInd party submits that the workman acted contrary to the procedure and Bank's book of Instructions and Circulars which resulted financial loss to the Bank. The management was compelled to take disciplinary action against workman. Chargesheet was issued to him. Department Enquiry was conducted after the charges were proved. Punishment of dismissal was imposed. That workman was given full opportunity for his defence. That the workman handed over deposit counter foil for Rs. 4500/- mentioning the amount in deposit in the Pass Book of the Account holder Shri Sher Singh in his Saving Bank Account No. S. 847. That after verifying the counter foil and other documents maintained in the bank, no such entries were found. That the workman was required to strictly comply instructions under Bank's book of Instructions and the circulars issued from time to time. It is submitted that the workman had given identification of Leeladhar Agrawal without verifying the specimen signatures. It is reiterated that the workman was given opportunity for his defence. The Enquiry Officer had properly marshalled the evidence. The workman did not insist to call handwriting expert for cross-examination. Workman was satisfied with the observations of the Enquiry officer in that regard. It is submitted that for proved

misconduct, services of workman are terminated. The order of termination does not call for interference.

5. Workman submitted rejoinder at Page 5/1 to 5/3 reiterating his contentions in statement of claim that he had not admitted his signature on the documents. That the enquiry was not properly conducted. The charges are not proved from evidence in Enquiry Proceedings. IInd party also filed rejoinder at Page 6/1 to 6/3 reiterating its contentions in Written Statement. That enquiry was conducted properly. The evidence was considered by Enquiry Officer. The termination from service is for proved misconduct.

6. The issues are framed by my predecessor on 31-8-90. Issue No. 1 was decided on 7-9-95. The enquiry is found proper and legal.

7. Keeping above aspects in view, the points which arise for my consideration and determination are as under:-

- | | |
|--|---------------------|
| (i) Whether alleged misconduct is proved from evidence in Enquiry Proceedings? | In Negative |
| (ii) Whether punishment of termination from service imposed against workman is legal and proper? | In Negative |
| (iii) If not, what relief the workman is entitled to?" | As per final order. |

REASONS

8. Termination of services of Ist party workman is challenged by this reference. The enquiry is found proper by my predecessor as per order dated 7-9-95. The workman has pleaded that the findings of Enquiry Officer are perverse. He had not admitted his signature on any documents. There is no evidence to prove misconduct against him. Here I make it clear that the Appellate Authority held that charge No. 2 with respect to giving wrong identification by workman Leeladhar Agrawal is not proved. Thus the dispute is limited to whether Charge No. 1 is proved from evidence in Enquiry Proceedings. Learned counsel for workman Shri N.B. Sharma submits that chargesheet issued alleging misconduct (1) loss caused to the Bank, (2) negligence in duty. The charges were not on the point that amount was received by delinquent and he committed the fraud. The finding of Enquiry officer at Page 3/33 is beyond the misconduct alleged against workman. Considering the tenor of workman, the findings of Enquiry Officer needs to be considered. The Enquiry Officer has observed at Page 3/33 that S.S. Agrawal has obviously misused the powers of granting receipts delegated to him by the Bank. He has kept aside all rules/procedure before granting the receipt. As per practice in the Bank, when the cash has correctly been accepted from the depositor as indicated in the relative vouchers, it is entered in the cash

scroll, serial number is incorporated in the voucher and counter foil and after branding the days receipt stamp, the counter foil is delivered to the depositor after signature of the cashier as authorized by the Bank. This has not been done. The charges are proved and can confidently say that the clear cut intension of Shri Agrawal was to defraud the Bank and tarnish the image of the Bank. The Management's Witness Shri Tulsiram Chourey at Page 3/12 has stated that Brijmohan S/o Sher Singh had come for depositing amount. The voucher was filled by him. That Brijmohan had gone to S.S. Agrawal i.e. delinquent. He claims ignorance whether he had come to cash section or to meet Shri S.S. Agrawal specific question was asked to him about letter in which amount of Rs. 4500/- received from Sher Singh. Said witness did not say anything about it. Thus from his evidence, it is clear that amount of Rs. 4500/- was received by the witness from Shri Sher Singh. He admits his signature on the statement. Further question was asked that the witness had received Rs. 4500/- from Shri Sher Singh, L.F.51/147. The witness said he had nothing to do in that regard. In reply to next question, witness admitted that in Pass Book A/C No. S-847 L.F. 51/395 pertaining to Shri Sher Singh, he made entry of Rs. 4500/-, it is clear from evidence of Shri Tulsiram Chourey that the amount of Rs. 4500/- was received by the witness and not by the delinquent. Enquiry officer did not discussed above evidence and mostly relied on statement of delinquent that the signature and mostly relied on statement of delinquent that the signature on the voucher appear like his signature. The statement of witness Brijmohan shows that he paid amount Rs. 4500/- to Shri Chourey. Workman has not admitted his signature in his statement at Page 3/25 but the signature appears like his signature.

9. The evidence of Shri Tulsiram Chourey, Brijmohan did not state that the delinquent had signed on the vouchers. They are the persons to know who had signed on vouchers as amount has been paid from Tulsiram to Shri Chourey and Tulsiram had handed over voucher to him. However both of them have not stated in evidence that the receipt was signed by him. On the point, learned counsel for workman Shri N.B. Sharma relies on ratio held in plenty of cases.

"In case of Roop Singh Negi versus Punjab National Bank and others reported in 2009(2) Supreme Court Cases 570. Their Lordship of the Apex Court held mere production of documents is not enough. Contents of documentary evidence has to be proved by examining witnesses. Further held FIR in itself not an evidence without actual proof of facts stated therein."

"In case of State of Punjab versus Sukhdev Singh reported in 1980(3) 1980-Vol-III SLR-29. Lordship of Punjab and Haryana High Court has held As noticed above, the Enquiry Officer has held the charges to

have been proved against the respondent only on the ground that he had admitted his guilt in the written statement. From persual of the written statement, however it is found that the respondent had denied all other allegations except that he had taken liquor at his residence in the Police Lines when he was having fever and headache and also feeling depressed because of his non-selection for the training course. It is, therefore, evidence that the respondent never pleaded guilty to the charge leveled against him and on the basis of his written statement any interference of guilt could not be drawn by any stretch of reasoning."

In present case, workman denied allegations in chargesheet against him filing reply to the chargesheet. He denied his signature while his statement is recorded. Merely saying that signature on voucher appears to be his signature cannot be said admission of Charge No. 1.

"In case of Satya Prakash versus Union of India and others reported in 1980(3) SLR-364. His Lordship of Gwalior bench held admission of delinquent officer to be taken as a whole cannot be split up and part thereof which is favourable to the prosecution."

10. Learned counsel for IInd party Shri Shrotri submits that the Enquiry Officer has considered evidence. Workman has not stated name of other persons signed on the voucher and therefore Enquiry Officer was right to hold that the voucher was signed by the workman as delinquent was working as clerk cum cashier. He has also placed reliance on ratio held in

"Case of Divisional Controller, NEKTC versus A. Amaresh reported in 2006(6) Supreme Court cases 187. Their Lordship dealing with quantum of punishment held misappropriation of small amount of SRTC funds of Rs. 360.95 in the case by conductor, held a grave act of misconduct which resulted in financial loss to RTC."

Reliance is also placed on ratio held in Cash of Ganesh Santa Ram Sirur versus State Bank of India and another reported in 2005(1) Supreme Court Cases 13. Their Lordship considering sanction of loan to his spouse by Bank Manager in contravention of services rules, although the cheque issued pursuant thereto was not encashed, held not an honest decision. Service rule prohibiting the Bank Manager to sanction loan to his spouse, held was a rule of integrity. Hence punishment of removal from service awarded to the Bank Manager was just and proper.

The facts of the present case are not comparable. Charges against the delinquent are not comparable. Ratio cannot be applied to present case at hand.

11. The evidence on record discussed above is not sufficient to hold that the delinquent had signed on the

voucher of Rs. 4500/-. The amount was not received by the delinquent. It is matter of surprise that the amount of Rs. 4500/- was received by Shri Tulsiram Chourey as per evidence of Brijmohan, S/o Sher Singh, it is not understood whether any action was taken against Tulsi Chourey. The evidence in Enquiry proceedings discussed above cannot establish the charges. The evidence of both Tulsiram and Brijmohan are silent about signature of delinquent on the voucher. Merely as the workman said in his statement that the signature appears to be like his signature cannot be termed as admission to hold workman guilty. For above reasons, I record my finding in Point No. 1 in Negative.

12. Point No. 2— In view of my charge No. 1 against delinquent is not proved from evidence in Enquiry proceedings, the Appellate Authority has already held that Charge No. 2 is not proved against delinquent. Thus both charge against delinquent are not proved. The punishment of termination imposed against workman for alleged misconduct which are not proved. Learned counsel for IInd party Shri Shrotri submits that power under Section 11-A of I.D. Act cannot be retrenched. Reliance is placed on ratio held in case of

"West Bokaro Colliery, TISCO Ltd. versus Ram Pravesh Singh reported in 2008 (3) Supreme Court Cases 729. Their Lordship of the Apex Court dealing with Section Section 11-A of I.D. Act held Labour Court or Industrial Tribunal cannot act as if it were an appellate body where two views are possible on evidence, Industrial Tribunal should every slow in interfering with the findings arrived at in domestic enquiry."

13. Reliance is also placed in ratio held in

"Case of workman of Balmadies Estates versus management of Balmadies Estates and others reported in 2008(4) Supreme Court Cases 517. Their Lordship held power of Labour Court under I.D. Act has expanded vastly after introduction of Section 11-A. Hence it can in an appropriate case consider the evidence which has been considered by the domestic tribunal and in a given case on such consideration arrive at a conclusion different from the one arrived at by the domestic tribunal."

14. Shri N.B. Sharma, Advocate counsel for Ist party on the point relies on ratio held in

"Case of Krishna Gopal Vaity versus M/s Collin & Co. and others reported in 1992-I-LLJ-110. Their Lordship of Bombay High court dealing with Section 11-A held Labour Court has power to consider correctness of evidence recorded by Enquiry officer and re-appreciate the same and also to interfere with the quantum of punishment."

In present case, as discussed above, he evidence of Tulsiram Chourey and Brijmohan I silent who signed on the vouchers of Rs. 4500/-. Amount was received by Shri Tulsiram Chourey. Their evidence is silent that the delinquent signed on the voucher handed over by Shri Tulsiram to Brijmohan. Therefore the punishment of termination of service cannot be sustained. It is illegal. The misconduct alleged is not proved. Accordingly I record my finding on Point No. 2.

15. Point No. 3— In view of my finding in Point No. 1 & 2, that charge No. 1,2 are not proved Termination of services is found illegal. the question arises to whether the workman is entitled for reinstatement with back wages. Therefore misconduct alleged are not proved. Workman deserves to be reinstated. The evidence is not clear what he was doing during all those years. Considering long period has passed the workman was terminated from service, in my considered view, reinstatement of Ist party workman with 50% back wages would be appropriate. Accordingly I record my finding on Point No. 3.

16. In the result, award passed as under:—

- (1) Action of the Regional Manager, SBI Bhopal is dismissing Shri S.S. Agarwal, Dy. Head Cashier, is not proper.
- (2) II party management is directed to reinstate workman with 50% back wages.

R.B. PATLE, Presiding Officer

नई दिल्ली, 30 दिसम्बर, 2013

का०आ० 126.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट संदर्भ संख्या 232/97 को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.12.2013 को प्राप्त हुआ था।

[सं० एल-12012/183/89-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th December, 2013

S.O. 126.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 232/97 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India, and their workmen, received by the Central Government on 30/12/2013.

[No. L-12012/183/89-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, JABALPUR****No. CGIT/LC/R/232/97****PRESIDING OFFICER: SHRI R.B. PATLE**

Shri Prakash Chandra Sethi,
S/o Shri Ghasilalji Sethi,
R/o 40/3, Sir Hukumchand Marg,
Indore ...Workman

Versus

Regional Manager,
Region-III, State Bank of India,
Gwalior Regional Office,
Modi House, Ganohi Road,
Gwalior

...Management

AWARD

Passed on this 27th day of November, 2013

1. As per letter dated 4-8-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-12012/183/89-IR(B)-I. The dispute under reference relates to:

"Whether Shri P.C. Sethi is a workman as defined under I.D. Act? If so, whether the action of the management of State Bank of Indore, Gwalior in terminating the services of Shri P.C. Sethi is legal and justified. If not, to what relief the workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party workman filed Statement of Claim at Page 3/1 to 3/6, Case of Ist party workman is that his date of birth is 14-11-1932. he was appointed by Bank of Jaipur Ltd. Indore on 6.12.1954 as clerk on probation of 9 months. He was confirmed on the said post on 1-9-1955. On 20.10.1962, his services were taken over by IInd party State Bank of Indore which is a body corporate by virtue of State Bank of India Act 1959. That since then he was working as Assistant Accountant. That he performed clerical duties. Writing log books/supplementaries, Inward Bills in register, Advices to branches/constituent, Clearing cheques etc. He was also taking down balances of current deposit ledger, Saving Bank deposit/ledgers, Recurring Deposit ledgers, Term deposit ledgers, special Term Deposit ledgers, Draft payables, payment orders and other Advance Accounts balance. The workman has given different kinds of duties performed by him i.e. signing routine vouchers, cheques, drafts, pay orders, advices, bill schedules statements etc. That he had no power to punish anybody, he had no authority to grant leave. He claims to be workman under Section 2(s) of I.D. Act.

3. That on 19.10.66, service conditions of award Staff or workman contained under earlier award were modified therefore memorandum of settlement between management and their workman. The settlement in industries known as Bipartite Settlement. The age of retirement was raised from 58 to 60 years as per Para-18.1 of Bipartite Settlement. However IInd party Bank vide unilateral order applied service regulations of 1979 placing him in Junior Management Grade Scale-I. That he had not given option though I places in junior management Grade Scale-I. he was performing duties of workman stated above. That he was retired on 30.1.88 on attaining age of 55 years as per the Bank of India (Officers Service Regulation 1979). Workman claims that he being workman as per Bipartite Settlement iPara-4 he was entitled to continue service till age of 60 years. He was retired by IInd party 4 years 10 months before the age of retirement. On such grounds, the workman submit that his retirement is in violation of Bipartite Settlement/Sastri Award. That State bank of Indore Officers service Regulation 1979 did not apply to him. The said regulations cannot override the Bipartite Settlement. Merely placing workman in Junior Management Grade Scale I, it doesnot seems to be workman that he was performing duties of clerical nature. As such he is workman under Section 2(s) of I.D. Act. He is entitled to retirement age of 60 years . He is retired 4 years 10 months before his superannuation date. On such ground, he is claiming for deciding the legality of his retirement and prays for consequential reliefs.

4. IInd party filed Written Statement at Page 11/1 to 11/12. IInd party submits that workman was promoted from clerical cadre as Junior Officer w.e.f. 1.5.66. workman had willingly accepted his promotion. Consequent to his promotion, the workman was discharging supervisory duties. His emoluments exceeded Rs. 500 per month from 1-5-66. The Bipartite settlement dated 19.10.66 came into force. Workman had an option to renounce his status of officer and revert to clerical cadre. However the workman did not avail the option. In 1970, when there was a general revision of pay scales and the First party workman was fitted in corresponding new scale of Officer Grade II, he tried to take up the issue regarding his being a workman in a civil suit. Said suit was withdrawn by workmen in 1973.

5. IInd party has reiterated that workman was reluctant to perform the duties assigned to his grade, chargesheet was issued to him. Warnings were also issued to him. Punishment withholding increments were imposed against him. That it often resulted in tendency of promoted officer to raise dispute claiming to be the workman disowning the status as Officer. Workman has failed to exercise this option as per Settlement dated 19.10.66. It is denied that workman is covered as workman under Section 2(s) of I.D. Act. It is submitted that workman was promoted as Junior Officer Scale Grade-I. that the notifications published in Gazette of India on 7-9-1963 and 6-3-76 by Board of Directors of the

Bank advising for general information the extent of Authority and signing powers that will be exercised by the supervisory staff. During 1966—69 when workman was working as Officer Incharge, Clearing Department at P.Y. Road, Indore branch of the Bank which has been the biggest branch of the bank throughout, the workman was required to control, command and direct the working of not less than 5 clerks and subordinate. That Ist party bank has reserved punishment against high managerial officers not below the rank of Regional Managers. When Ist Bipartite Settlement came into force on 9-10-66, Ist party was promoted to Supervising official Cadre w.e.f 1.5.66. That as per Clause 5.14(iv), the failure on part of Ist party workman is deemed to have chosen to continue in the Bank's Supervising Officials cadre and terms and conditions of service.

6. Ist party submits that in 1980, there was general revision of pay scales as per Statutory regulations of State Bank of India. Ist party was already working as Officer Grade-II having been promoted from 1.5.66 in Junior Management Scale I. All adverse contentions of Ist party workman are denied that he continued to work in clerical cadre and as such covered as workman under Section 2(s) of I.D. Act Ist party had completed 30 years service on 5-12-1984. He has attained the age of superannuation. The competent authority had granted extension in service till 13.11.1987 when he attained age of 55 years. Further extension was not desirable. Workman was allowed to retire on 30.1.1988. On such ground Ist party submits that the dispute raised by workman deserves no merit.

7. Ist party workman filed rejoinder at Page 12/1 to 12/2 reiterating his contentions in Statement of Claim that he is covered as workman as under Section 2(s) of I.D. Act.

8. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether Shri P.C. Sethi is a Workman as defined under I.D. Act?	In Negative
(ii) Whether the action of the Management of State Bank of Indore, Gwalior in terminating the services of Shri P.C. Sethi is legal?	In Negative
(iii) If not, what relief the Workman is entitled to?	Relief prayed by workman rejected.

REASONS

9. Workman claims to be doing clerical duties and as such covered as workman defined under Section 2(s) of I.D. Act. Ist party denied above contentions. The affidavit

is filed by Ist party workman stating that he was appointed as clerk on 1-9-1955. The Bank was merged in State Bank of Jaipur in 1962. He has stated details of his duties Writing log books/supplementaries, Inward Bills in register, Advices to branches/constituents, Clearing cheques etc. He was also taking down balances of current deposit ledger, Saving Bank deposit/ledgers, Recurring Deposit ledgers, Term deposit ledgers, special Term Deposit ledgers, Draft payables, payment orders and other Advance Accounts balance. The workman has given different kinds of duties performed by him i.e. signing routine vouchers, cheques, drafts, pay orders, advices, bill schedules statements etc. In his cross-examination, workman says that he was promoted as Junior Officer on 1-5-1966. On 17-5-1980, he was not discriminated as Junior Officer. That he was performing his official duties as has been fixed. That he was performing duties states in Para-4-a, b, c of his affidavit. That he was not holding post of Junior management Scale I at any time. that he was working as Accountant. Any official document in that regard is not filed by him. Thus the workman has not produced any document that he was performing duties of Accountant. Workman is defined under section 2(s) of I.D. Act.

Section 2(s):—

"Workman means any person including an apprentice employed in any industry to do any manual, unskilled, skilled technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

- (i) Who is subject to Air force Act, 1950 or the Army Act, 1950 or
- (ii) Who is employed in the police service or as an officer or other employee of a prison, or
- (iii) Who is employed mainly in a managerial or administrative capacity or
- (iv) Who being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises a either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

Workman is retired from service on 30-1-1988. The workman has challenged legality of his retirement. Therefore the duties performed by workman at the time of his retirement needs to be considered. Documents are produced as per

Exhibit M-1, workman was promoted as Junior Officer Grade. As per document Exhibit M-2, the Ist party workman had undertaken to serve at any branch of Bank when called upon by Bank in connection of his promotion to the Junior officers cadre. As per Exhibit M-3, after employee has attained age of 58 years, he will be made to retire unless Directors give him extension. Exhibit M-4 is copy of service conditions as per settlement. Employees were excluded from exercising options, all employees promoted to the supervisory cadre of the Bank before 31-11-1962. As per document Exhibit M-8, workman had requested that it will not suit him to take over charge of Bank as he was suffering from illness. As per Exhibit M-9, workman was directed giving 3 months time to make himself suitable for expected duties. As per Exhibit M-11, workman was informed that he was incapable of undertaking duties and responsibilities commensurable with his cadre. Said letter was issued on 29-9-96. In Exhibit M-12, workman had requested management before taking any action on him, he wanted to know the truth relating to bogus entry. Vide Exhibit M-13, workman was directed to act as temporary Branch Manager of Khandwa Branch on 26-5-76. Vide Exhibit M-15, letter dated 14-7-76 the workman was informed that he was allotted duties of passing cheques, drafts etc. Vide Exhibit M-16 the duties allocated is shown. The Branch Manager in his absolute discretion, can require the Assistant Accountant to pass vouchers to sign drafts, etc. without any upper limit. Exhibit M-17 relates to allocation of duties to workman. As per Exhibit M-18 workman was informed by telegraph and that he was deputed to Gogaon branch in place of Shri R.N. Parse who is proceeding on leave from 4-10-1976. As per Exhibit M-19, workman had requested for reconsideration of his deputation and make suitable arrangements. It was with reference to office letter dated 15-9-76. All those documents clearly shows that the request of workman not to assign duties of supervisory officer grade. The documents shows that he was working in officer grade but not inclined to do the duties prescribed. Several documents in that regard are produced. The document Exhibit M-22 is chargesheet issued to workman. The charge relates to Branch Manager Khandwa under whose supervisory control the workman was working, allocated vide letter dated 14-7-1976 duties of passing vouchers, cheques, drafts etc. he failed to discharge those duties. Charges related to disobeying the orders of the superiors. As per document Exhibit M-23, workman was imposed punishment of cancellation of one increment. Articles of charges is produced at Exhibit M-24. Order of penalty is produced at Exhibit M-25. The penalty was imposed vide Regulation 68(1)(ii) of the State Bank of Indore Officers Service Regulation Act 1979. As per Exhibit M-26 letter dated 27-6-72 workman was informed that he will continue to be in supervisory cadre in the Bank as such he will be liable to be posted as a Branch Agent. That he will not be entitled to any benefits which have already accrued to the members of the supervising staff under the revision. Despite

of it, workman was informed that he will be continued to be in supervisory cadre. The Ist party is claiming to be workman without challenging above orders. His claim is contrary to the documents produced above. Workman had disobeyed the order of his superior and penalty was imposed for disobedience of orders. His one increment was cancelled long back in 1972, suppressing all those documents workman is claiming that he was continuing to work as clerk appears after thought. Exhibit 49 is order of his posting at Khandwa Branch as Assistant Accountant.

10. Evidence of Management's witness Mukesh Dwivedi is filed on affidavit. The witness of the management has stated that Ist party workman was promoted as Junior Officer on 1-5-66. He was given benefit of Ist Bipartite Settlement dated 19-10-1966. He was posted as Officer Grade-II in 1970. Ist party workman had filed Civil Suit in 1973, it was withdrawn in 1979. That workman received benefit as Officer Grade-II under the Officer Service Regulation, 1979 till his retirement in 1988. The evidence of the management's witness remained unchallenged. Workman failed to cross-examine. All these evidence shows that the workman was promoted as Officer Grade-II. He received all benefits of said post since 1966 till retirement in 1988. Workman has suppressed fact of filing civil suit and punishment imposed, chargesheet issued on him for disobedience in duty. Therefore evidence of workman is not worthy of reliance. His claim that he was performing duties of clerical nature cannot be relied. As the workman was promoted as Junior Officer Grade-II in 1966. Workman has not stated what were the duties assigned to the officer Grade-II. Therefore I record my finding in Point No. 1 in Negative.

11. Workman is challenging order of his retirement dated 30-1-88 claiming that he was working as workman and not in officers cadre. That the age of retirement of the workman cadre is 60 years. He was retired 4 years 10 months before date of his superannuation. Above contentions of workman are denied by IInd party. Section 2(oo) of I.D. Act defines retrenchment.

Section 2(oo)—Retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but doesnot include—

- (a) Voluntary retirement of the workman; or
- (b) Retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf

Thus retirement or superannuation of workman is not covered in definition of retrenchment. Therefore the retirement of workman cannot be said retrenchment under Section 2(oo) of I.D. Act. Therefore legality of his retirement cannot be challenged by dispute under Section 10 of I.D. Act.

Therefore I record my finding in Point No. 2 in Negative.

12. In view of my finding in Point Nos. 1, 2, that workman is not covered under Section 2(s) of I.D. Act. The retirement of workman is not covered under Section 2(oo) of I.D. Act as retrenchment. Therefore the workman is not entitled to any relief. Accordingly I record my finding in Point No. 3.

13. In the result, award is passed as under:—

- (1) Workman is not covered as workman under Section 2(s) of I.D. Act.
- (2) Retirement of workman by IInd party management is proper.
- (3) Workman is not entitled to the relief prayed.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 दिसम्बर, 2013

कांआ 127.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 56/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/12/2013 को प्राप्त हुआ था।

[सं एल-41011/22/98-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th December, 2013

S.O. 127.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 56/99) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial dispute between the management of Central Railway, and their workmen, received by the Central Government on 30/12/2013.

[No. L-41011/22/98-IR(B-I)]

SUMATI SAKLANI, Section Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/56/99

PRESIDING OFFICER: SHRI R.B. PATLE

The Divl. Organising Secretary,
Madhya Railway Karmchari Sangh,
RB-II, 176-D, Railway East Colony,
BhopalWorkman/Union

Versus

Sr. Divisional Personnel Officer,
Central Railway,
Bhopal
Executive Engineer(Const.),
Central Railway,
Bhopal

.....Management

AWARD

(Passed on this 22nd day of November, 2013)

1. As per letter dated 12-1-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-41011/22/98/IR(B-I). The dispute under reference relates to:

"Whether the action of the management of Sr. Divisional Railway Manager, Central Railway, Bhopal in not regularizing Shri Resham Bahadur and Shri Ram Vilas in the post of Motor Driver even after completing 240 days service in a calendar year is justified? If not, to what relief the workmen are entitled for?"

2. After receiving reference, notices were issued to the parties. Workman filed Statement of Claim at Page 3/1 to 3/2. Case of 1st party workman is that 1st party No. 2 Reshambai was appointed as Gangman Cat-IV on 26-6-82. On 1-3-1983, he was appointed as Motor Driver Cat-III. On 21-6-88, he was appointed as Motor Driver Grade II. However his services were not confirmed on said post. 1st party no. 3 Ramvilas was first appointed as labour on 19-9-81. On 15-3-89, he was appointed as Category IV, on 1-9-89 he was appointed as Jeep Driver Grade-III. On 16-9-84, he was given Adhoc promotion for 3 months in Driver Cat-II. That he was not confirmed on said post. That 1st party No. 3 Ramvilas was working at Bhopal vide order dated 7-10-99. He was transferred to DEE©/RE/BPL on same grade pay Rs. 4000-6000. That 1st party No. 3 without any hearing was reverted to pay scale Rs. 3050-4590 illegally. He claims to be entitled to pay Scale Rs. 4000-6000. He was illegally posted in Pay Scale Rs. 3050-4590 by DEE(C). 1st party No. 2,3 further submits that they have repeatedly written letters for fixation of their lien. However IInd party No. 1 to 3 have not fixed their lien. On such ground, 1st party BNo. 2,3 prays for fixation of their lien. On such grounds, 1st party No. 2,3 prays for fixation of their lien. 1st party No. 3 prays for setting aside order of reversion from Grade II to Grade-III.

3. IInd party filed Written Statement at page 21/1 to 21/2. The case of IInd party is that IInd party No. 2 Resham Bahadur was appointed as Khalasi in Pay Scale Rs. 780-940 on 26-6-82 & 1-4-89. He was appointed on 1-4-89 as Motor Driver on adhoc basis. That he had passed departmental exam prior to his appointment as motor driver

on adhoc basis. Grade II Pay Scale Rs. 1200-1800. He was promoted on 21-6-88 & 16-11-94. The record is available in office. The required trade test was conducted by Asstt. Chief Engineering Workshop Jhansi. After passing the trade test, 1st Party No. 2 Resham Bahadur was appointed as Motor Driver on 1-3-83. That the consideration division is temporary division. Therefore there is no point of fixing lien in the consideration division. That as per letter dated 7-6-98, IInd party had requested Personnel Manager, Bhopal for fixation of lien of 1st party workman at appropriate stage. However no action was taken by said authority despite of repeated letters. The consideration division being temporary division, the lien of 1st party No. 2, 3 could not be fixed. That as per Personnel Manager, Rail Division, Bhopal memo No. P-400/2/EG different policy employees in Bhopal Division were not required to submit their options. The employees were to be kept on lien in the division. IInd party has not opposed the relief prayed by workman.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|---|---------------------|
| (i) Whether the action of the management of Sr. Divisional Railway Manager, Central Railway, Bhopal in not regularizing Shri Resham Bahadur and Shri Ram Vilas in the post of Motor Driver even after completing 240 days service in a clendar year is justified? | In Negative |
| (ii) If not, what relief the workman is entitled to?" | As per final order. |

REASONS

5. 1st party workman Resham Bahadur & Ram Vilas are praying for fixation of lien. As per the terms of reference, the dispute relates to denial of regularization of their services after completing 240 days working as Motor Driver. The reference does not relate to the reversion of 1st party No. 3 Ram Vilas by DE in Pay Scale 3050-4590. Thus the claim of 1st party No. 1 w.r.t. his reversion in Pay Scale from 4000-6000 in Pay Scale 3050-4590 is beyond the terms of reference. The relief claimed by 1st party No. 3 Ram Vilas cannot be adjudicated. So far as relief prayed by 1st party No. 2, 3 and fixation of lieu, IInd party has not disputed the same. The documents are produced by 1st party workman. Ram Vilas was working as Jeep Driver Gr-III, was promoted as Jeep Driver Grade-II on adhoc basis for 3 months as per Order No. 39/94 dated 16-11-94. The copy of order No. 39/94 produced shows that Shri Ram Vilas was working as jeep Driver in Grade Rs. 4000-6000. Letter dated 19-7-95 shows that office of IInd party had requested for fixation

of lien of Resham Bhadur, Ram Vilas alongwith others. However no action was taken by the concerned Railway Authorities. Ram Vilas filed his affidavit of evidence. He has stated about his promotion on Grade-II Jeep Driver on 1-9-89, 16-11-94. He is continuously working on said post. He was not cross-examined by IInd party. Resham Bahadur filed affidavit of his evidence stating that he was working as Jeep Driver Grade-II in office of Dr. Chief Engineer, Bhopal in Pay Scale Rs. 4000-6000. That initially he was appointed as Gangman on 26-6-82. He was appointed as Motor Driver Grade-III on 1-3-88. Again on 21--6-88 he was appointed as Motor Driver Grade-II. That his seniority was not fixed. He was not cross-examined by IInd party. Affidavit of evidence of management's witness Bhagwan Sahay Meena is filed. The witness of the management has stated that Resham Bhadur was appointed as Gangman on 26-6-68 in Pay Scale 196-232. Ram vilas was appointed as Gangman on 1-1-84 in Pay Scale 196-232. That in Railway Construction Division, employees are not directly appointed. The employees are taken from other division as per requirement of the work. Seniority list is not maintained of the employees in construction division. The employees are provided lien. That the Seniority of Resham Bhadur and Ram Vilas is maintained by Personnel Manager, Rail Mandal, Bhopal. In para-8 of his affidavit, management's witness has stated that the lien of both the workmen is being maintained by Personnel Manager, Rail Mandal Bhopal. However no documents is produced in that regard. Management's witness is not cross-examined. Workman has submitted application for withdrawal of the case supported by affidavit appears unusual when their claim is not settled, how the workman can withdraw their claim.

6. Learned counsel for workman at the time of hearing was unable to explain how the documents were admitted by 1st party No. 2,3 themselves.

7. Reliance is placed by learned counsel in—

"Case of P.P. Muralidharan Versus Zonal Manager, Food Corporation of India others reported in 1994 Supp (2) Supreme Court Cases 201. Their Lordship the Apex Court dealing with the promotion right to transfer on request to another zone with termination of lien in the old zone and subject to bottom seniority in the new zone-Judicial quashment of a certain restriction on promotion to the next higher post resulting in entitlement of the transferee to promotion w.e.f. a pre-transfer date in the old zone. In such circumstances, the transferee, held, entitled to promotion in the new zone despite the termination of his lien in the old zone."

The facts of present case are not comparable. In present case but Ist party No. 2 & 3 were appointed in IInd party itself. There is no evidence on their transfer from other division. However affidavit of management's witness is clear that lien of employees in construction division is of no use. The lien of Ist party workman No. 2, 3 is to be

maintained in the office of Personnel Manager, Railway Division, Bhopal. However steps are not taken by such office in maintaining lien of seniority of workman. The evidence shows that the workman are regularly working as Jeep Driver Cat-II from 1984 discussed above. Though the promotion of Ist party workman was on adhoc basis, he was continuously working on said post. The Controlling Authorities has shown negligence in their duty by not maintaining Seniority lien of workman. Therefore I record my finding on Point No. 1 in Negative.

8. In the result, award is passed as under:—

- (1) Action of the management of Sr. Divisional Railway Manager, Central Railway, Bhopal in not regularizing Shri Resham Bahadur and Shri Ram Vilas in the post of Motor Driver even after completing 240 days service in a calendar year is not proper.
- (2) Ist party workman No. 2 Resham Bahadur, No. 3 Ram Vilas are deemed promoted as Motor Driver Cat-II from 21-6-88, 16-9-94 respectively. Their lien be fixed in the Controlling Division by Personnel Manager, Railway Division, Bhopal.

R.B. PATLE, Presiding Officer

नई दिल्ली, 30 दिसम्बर, 2013

का०आ० 128.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट संदर्भ संख्या 238/97 को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/12/2013 को प्राप्त हुआ था।

[सं० एल-41012/77/93-आई आर (बी-1)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th December, 2013

S.O. 128.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. No. 238/97 of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Central Railway, and their workmen, received by the Central Government on 30/12/2013.

[No.L-41012/77/93-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/238/97

PRESIDING OFFICER: SHRI R.B. PATLE

Shri Upendra Shrama,
H.No. 3880, Shiv Kumar Gupta's House,
Kanchghar Nai Basti,
Jabalpur (MP)

.....Workman

Versus

The Divisional Railway Manager,
Central Railway,
Bhopal

.....Management

AWARD

(Passed on this 28th day of November, 2013)

1. As per letter dated 13-8-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to his Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-41012/77/93-IR(B-I) The dispute under reference relates to:

"Whether the action of the management of Divisional Railway Manager, Central Railway Bhopal in terminating the services of Shri Upendra Prasad Sharma S/o Shri Bishu Sharma w.e.f. 19-1-87 is justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party filed Statement of claim at Page 2/1 to 2/4. The case of workman is that he was working as Railway Khalasi Pay Scale 750-1040 with IInd party No. 3 IInd party No. 2 is Divisional Authority of IInd party No. 3 PWI, IInd party No. 1 is zonal authority. That IInd party terminated his services from 19-1-87 in violating of Service Rules, principles of natural justice, Article 311 of the constitution. He was not paid retrenchment compensation. He was not served with 14 days notice. That IInd part No. 3 is not his Appointing Authority therefore the termination of his service is illegal. That he had protested termination of his service to IInd party No. 2 his request was not considered. Thereafter he had approached ALC, Bhopal and the dispute has been referred. IInd party terminated his services in violation of Para 2301 (b) (1) of Railway Establishment Manual. Rule 9 of Disciplinary Appeal Rule 1968 of Railway servants. Under Rule 149(5) of Railway Establishment Vol-1, termination of his services is unconstitutional. On such ground, he prays for his reinstatement on the post of Khalasi. He also prays for consequential benefits.

3. IInd party filed Written Statement at Page 7/1 to 7/3. The calim of workman is totally denied. It is denied that Ist party worked from 1985. Rather it is submitted that he was engaged as casual labour w.e.f 19-6-86 under PWI. Violation of Article 311(2) of the constitution and other rules is denied. IInd party submits that workman had obtained employment producing bogus employment card. After scrutiny, it was found that casual service card were never issued to him. Therefore show cause notice was issued to him. That after issuing show cause notice, the

workman left the service. He has also left the place. He never came to join duties and directly filed proceeding before ALC for conciliation. IInd party also request permission to prove misconduct against the workman. That there is inordinate delay in making application before ALC. IInd party prays for rejection of claim of workman.

4. Workman has filed rejoinder at Page 8/1 to 8/3 reiterating his contentions in statement of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of Divisional Railway Manager, Central Railway Bhopal in terminating the services of Shri Upendra Prasad Sharma S/o Shri Bishu Sharma w.e.f. 19-1-87 is justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to relief prayed by him.

REASONS

6. Workman is challenging termination of his services for violation of Article 311(2) of constitution. Para 2301(b)(i) of Indian Railway Establishment Manual etc. That he was not served with notice before termination of his services. Workman filed his affidavit of evidence. He has stated that he worked under Management of IInd party from May, 1985 to 18-1-87 as monthly rated casual labour. He was stopped from work from 19-1-87 without paying retrenchment compensation, his services were terminated in violation of Section 25-F of I.D. Act. That he was engaged in Railway service as casual labour. He got monthly rated pay of MRCL. He acquired temporary status. That his services were wrongly terminated on ground that fake service card was produced by him. Show cause notice dated 3-1-87 was issued to him workman in his cross-examination says he received appointment letter. Same is produced on record. He had received letter of termination produced on record. The document is at Exhibit M-7. He joined service on the basis of service card Exhibit M-1. In his further cross-examination, workman says for securing card, he was required to deposit Rs. 2, he receipt of amount. He has received such receipt but the said fact is not pleaded in his Statement of Claim. Thus evidence of workman that he deposited Rs. 2 for securing card, the received receipt was lost appears afterthought as those facts are not stated in his Statement of Claim. His Statement of Claim is also silent about he was securing job on the basis of the card when he had already received show cause notice dated 3-1-87. The notice Exhibit M-7 dated 3-1-84 clearly refers that workman

had obtained employment as casual labour at Loco from Jabalpur depot on 10-4-1982 on production of Casual Labour Card issued by PWI/LF-JBP. That enquiry is revealed that casual labour card No. 289125 shown by him at the time of request for appointment. Vacancy at BIR was forged and false. Appointment was obtained on the strength of such entries. Workman was called upon to explain within 15 days as to why his services should not be terminated for above reasons. Workman did not submit explanation to said showcause notice. As per pleadings of management, the workman did not report to work. He also did not submit report. The evidence of management's witness on above point is not shattered in his cross-examination. The management's witness Victor Kleton says that Card No. 289125 was not issued from his office. In his cross-examination, witness of the management says that he was working in Loco foreman office. That entries in Exhibit M-8 are in respect of left thumb for the period 1979 to 1984. The period was 3-4 years subsequent to his joining service in Locoshed. That he was not appointed in Locoshed. The working rule for Locoshed was established in 2006. The casual labour card was issued by foreman. He was unable to tell who was foreman in 1982.

7. Learned counsel for Ist party H.R. Bharti pointed out my attention to documents Exhibit M-1 to M-5 and emphasized that no enquiry was held to hold that the casual card issued to the workman was bogus. There is no evidence to hold that any kind of enquiry was made before concluding that casual card issued to workman was forged or bogus. In present case as per document Exhibit M-7 show cause notice was issued to workman on 3-1-87 why his services should not be terminated as casual card produced by him was bogus. The workman did not give reply to it. The evidence of workman is silent whether he has replied to show cause notice. Workman himself has not replied to the show cause notice, I do not find substance in the argument.

8. Learned counsel for workman Shri Bharti relies on judgment in a similar Case No. R/86/05 in which the workman was granted reinstatement with 20% back wages. However the evidence in present case is different. Show cause notice was issued to the workman calling upon him to explain why his services could not be terminated for production of bogus casual card. Workman has not replied to it. The facts in Reference 86/05 are not comparable as in said case, there was no evidence that showcause notice was issued to the workman and he failed to reply the same. Therefore I do not find appropriate to take similar view in the matter. As show cause notice was not replied, the opportunity given to the workman has not availed by him to explain that the casual card produced by him was genuine. The dispute is referred after lapse of 10 years. Therefore the action taken by management terminating his services cannot be said illegal. For above reasons, I record my finding in Point No. 1 in Affirmative.

9. In the result, award is passed as under:—

- (1) Action of the management of Divisional Railway Manager, Central Railway Bhopal in terminating the services of Shri Upendra Prasad Sharma S/o Shri Bishu Sharma w.e.f. 19-1-87 is proper.
- (2) Workman is not entitled to relief prayed by him.

R.B. PATLE, Presiding Officer

नई दिल्ली, 30 दिसम्बर, 2013

का०आ 129.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आयुक्त, दिल्ली नगर निगम के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. -1 के पंचाट (संदर्भ संख्या 27/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[सं एल-42011/101/2011-आईआर (डीयू)]

पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 30th December, 2013

S.O. 129.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 27/2012) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Commissioner, MCD and their workman, which was received by the Central Government on 26/12/2013.

[No. L-42011/101/2011-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

**BEFORE DR. R. K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO. 1, DELHI**

I.D. No. 27/2012

Sh. Ishwar Singh S/o Sh. Gugan,
C/o Delhi Municipal Mazdoor Trade Union
BE-360, Lane-I,
New Delhi.

...Workman

Versus

The Commissioner,
Municipal Corporation of Delhi,
Town Hall, Chandni Chowk,
Delhi-110006

... Management

AWARD

A safai karamchari was engaged on muster roll to render services in a colony, which was under the control and management of Delhi Development Authority (in short the Authority). Later on, control and management of the said colony was transferred to Municipal Corporation of Delhi (in short the Corporation). Services of safai karamchari, engaged on muster roll by the Authority was transferred to the Corporation. He was regularized in service by the Corporation with effect from 01.08.1971, *vide* office order dated 19.07.1971. At the time of regularization of his service, he gave his date of birth as 24.04.1947. He was superannuated from service by the Corporation on 30.04.2007. After his superannuation, he raised a demand claiming to be of younger age than the age, recorded in service record by the Corporation. His demand was not conceded to by the Corporation. He approached the Municipal Mazdoor Trade Union (in short the Union) for redressal of his grievances. The Union raised a dispute before the Conciliation Officer. Since the Corporation contested the claim, conciliation proceedings failed. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, *vide* order No. L-42011/101/2011-IR(DU), New Delhi dated 25.01.2012, with following terms:

"Whether action of the management of Municipal corporation of Delhi (MCD), Town Hall Delhi in terminating the service of the workman Shri Ishwar Singh, S/o Shri Gagan, ex-safai karamchari, on the basis of two different date of birth recorded in the service book with effect from 30.04.2007 and without giving an opportunity to the workman of being heard is justified? What relief the workman is entitled to?"

2. In the reference order, the appropriate Government commanded the parties to the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions, so given, Shri Ishwar Singh opted not to file his claim statement with the Tribunal.

3. Notice was sent to Shri Ishwar Singh by registered post on 16.02.2012, calling upon him to file claim statement before the Tribunal on or before 06.03.2012. This notice was sent to him through the union, at Delhi Municipal Mazdoor Trade Union, BE-360, Lane I, New Delhi, the address provided by the appropriate Government in order of reference. However, the postal article was received back with the remarks 'Address incomplete'. Hence, complete address was called for from the appropriate Government. Notice was sent to the claimant by registered post on 08.05.2012, calling upon him to file his claim statement before this Tribunal on 24.05.2012, on which date Shri

Pradeep Kaushik appeared before the Tribunal and sought time.

4. Thereafter none came forward on behalf of the claimant to file his claim statement, hence final notice was sent to him by registered post on 13.12.2012 commanding the claimant to file his claim statement before the Tribunal on or before 08.01.2013, Neither the postal articles, referred above, were received back nor was it observed by the Tribunal the postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was also served upon the claimant. Despite service of these notices, claimant opted to abstain away from the proceedings. No claim statement was filed on this behalf.

5. Since onus of the question referred for adjudication was on the Corporation, it was called upon to file its response to the reference order. In its response to the reference order, the Corporation presents that the dispute is not maintainable since it has not acquired status of an industrial dispute for want of espousal of a union or considerable number of workman in its establishment. It has also been pleaded that the dispute is not maintainable on the grounds of delay, since a belated claim was raised after a gap of five years. Claimant is not entitled to any relief on account of delay and laches, pleads the Corporation. The Corporation further pleads that at the time of regularization of his services in August 1971, he was medically examined. At that time, he filled in a form and gave his date of birth as 24.04.1947, which date of birth was recorded in his service record. Since the claimant reached the age of superannuation, he was made to retire on 30.04.2007. He has no claim and the dispute may be answered in favour of the Corporation.

6. Arguments were heard at the bar. None came forward on behalf of the claimant to advance arguments. Shri Umesh Gupta, authorized representative, raised submissions on behalf of the Corporation. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:

7. At the outset, the Corporation argued that the dispute is an individual dispute since it has not been espoused by a union or considerable number of workmen in its establishment. An individual dispute does not give jurisdiction to this Tribunal. For an answer to this proposition, definition of the term 'industrial dispute' is to be construed. Section 2(k) of the Industrial Disputes Act, 1947 (in short the Act), defines the term 'industrial dispute', which definition is extracted thus:

"2(k) 'Industrial dispute' means any dispute or difference between employers and employees, or between employers and workmen or between workmen and workmen, which is connected with the

employment or non-employment or the terms of employment or with the conditions of labour, of any person."

8. The definition of "Industrial dispute" referred above, can be divided into four parts, viz. (1) factum of dispute, (2) parties to the dispute, viz. (a) employers and employees, (b) employer and workmen, or (c) workmen and workmen, (3) subject matter of the dispute, which should be connected with—(i) employment or non employment, or (ii) terms of employment, or (iii) condition of labour of any person, and (4) it should relate to an "Industry".

9. The definition of "Industrial dispute" is worded in very wide terms and unless they are narrowed by the meaning given to word "workman" it would seem to include all "employer", all "Employments" and all "workmen", whatever the nature or scope of the employment may be. Therefore, except in the case where there can be a dispute between the employers and employees and workmen and workmen, one of the parties to an industrial dispute must be an employee or a class of employees. The first point, therefore, to be noted, perhaps self evident, is that the phrase "employer and workmen", the plural may include singular on either side or any permutation of singular or plural, the masculine including the feminine. In order, therefore, to determine as to whether a controversy or difference or a dispute is an "an industrial dispute" or not, it must first be determined whether the workman concerned or workmen sponsoring his cause satisfy the conditions of clause (s) of section 2 of the Act. Here in the case the Corporation does not dispute status of the claimant to be of a workman within the meaning of section 2(s) of the Act.

10. The Apex Court put gloss on the definition of "Industrial dispute" in *Dimakuchi Tea Estate* [1958 (1) LLJ 500] and ruled that the expression "any person" in clause (k) of section 2 of the Act must be read subject to such limitation and qualification as arise from the context, the two crucial limitations are (i) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to other, and (2) the person regarding whom the dispute is raised must be one for whose employment, non employment, terms of employment or conditions of labour, as case may be, the parties dispute for a direct or substantial interest. Where workman raised a dispute as against their employment, the person regarding whose employment, non employer, terms of employment or conditions of labour, the dispute is raised need not be strictly speaking "workman" within the meaning of the Act, but must be one in whose employment, non employment, terms of employment, or conditions of labour the workmen as a class have a direct or substantial interest. The observations made by the Apex Court are to be extracted thus:

"We also agree with the expression "any person" is not co extensive with any workman, particular or otherwise, equal with other, that the crucial test is one of community of interest and the person regarding whom the dispute is raised must be one in whose employment, non employment, terms of employment, conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest. Whether such direct or substantial interest has been established in a particular case will depend on its facts and circumstances."

11. In *Kyas Construction Company (Pvt.) Ltd.* [1958 (2) LLJ 660], the Apex Court ruled that an industrial dispute need not be a dispute between the employer and his workman and that the definition of the expression "Industrial dispute" is wide enough to cater a dispute raised by the employer's workman with regard to non employment of others, who may not be employed as workman at the relevant time. The Apex Court in *Bombay Union of Journalist* [1961 (II) LLJ 436] has observed that in each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute, the test is whether at the date of reference, the dispute was taken up as submitted by the union of the workmen of the employer against whom, the dispute is raised by an individual workman or by an appreciable number of workmen. In order, therefore, to convert an individual dispute into an industrial dispute, it has to be established that it has been taken up by the union of employees of the establishment or by an appreciable number of the employees of the establishment. As far as union of the workmen of establishment itself is concerned, the problem of espousal by them generally presents little difficulty, since such workmen who are members of such unions generally have a continuity of interest with an individual employee who is one of their fellow workman. But difficulty arise when the cause of a workman, in a particular establishment is sponsored by a union which is not of the workmen of that establishment but is one of which membership is open to workmen of their establishment as well as in that industry. In such a case a union which has only microscopic number of the workmen as its member, cannot sponsor any dispute arising between the workmen and the management. A representative character of the union has to be gathered from the strength of the actual number of co-workers sponsoring the dispute. The mere fact that a substantial number of workmen of the establishment in which the concerned workman was employee were also members of the union would not constitute sponsorship. It must be shown that they were connected together and arrived at an understanding by a resolution or by other means and collectively submitted the dispute.

12. The expression "industrial disputes" has been construed by the Apex Court to include individual disputes,

because of the scheme of the Act. In *Raghu Nath Gopal Patvardhan* [1957 (1) LLJ 27] the Apex Court ruled as to what dispute can be called as an industrial dispute. It was laid thereon that (1) a dispute between the employer and a single workman cannot be an industrial dispute, (2) it cannot per-se be an industrial dispute but may become if it is taken up by a trade union or a number of workmen. In *Dharampal Prem Chand* [1965 (1) LLJ 668] it was commanded by the Apex Court that a dispute raised by a single workman cannot become an industrial dispute unless it is supported either by his union or in the absence of a union by substantial number of workmen. Same law was laid in the case of *Indian Express Newspaper (Pvt.) Limited* [1970 (1) LLJ 132]. However in *Western India Match Company* [1970 (II) LLJ 256], the Apex Court referred the precedent in *Dimakuchi Tea Estate's Case* [1958 (1) LLJ 500] and ruled that a dispute relating to "any person becomes a dispute where the person in respect of whom it is raised is one in whose employment, non employment, terms of employment or conditions of labour, the parties, dispute for a direct or substantial interest".

13. What a substantial or considerable number of workmen would be in a given case, depend on particular facts of the case. The fact that an "industrial dispute", is supported by other workmen will have to be established either in the form of a resolution of the union of which workman may be member or of the workmen themselves who support the dispute or in any other manner. From the mere fact that a general union, at whose instance an "industrial dispute" concerning an individual workman is referred for adjudication, has on its roll a few of the workmen of the establishment as its members, it cannot be inferred that the individual dispute has been converted into an "industrial dispute". The Tribunal has therefore, to consider the question as to how many of the fellow workman actually espoused the cause of the concerned workman by participating in the particular resolution of the Union. In the absence of a such a determination by the Tribunal, it cannot be said that the individual dispute acquired the character of an industrial dispute and the Tribunal will not acquire jurisdiction to adjudicate upon the dispute. Nevertheless, in order to make a dispute an industrial dispute, it is not necessary that there should always be a resolution of substantial or appreciable number of workmen. What is necessary is that there should be some express or collective will of a substantial or an appreciable member of the workmen treating the cause of the individual workman as their own cause. Law to this effect was laid in *P. Somasundaram* [1970(1) LLJ 558].

14. It is not necessary that the sponsoring union is a registered trade union or a recognized trade union. Once it is shown that a body of substantial number of workmen either acting through a union or otherwise had sponsored the workman's cause, it is sufficient to convert it into an industrial dispute. In *Pardeep Lamp Works* [1970 (1) LLJ

507] complaints relating to dispute of ten workmen were filed before the Conciliation Officer by the individual workmen themselves. But their case was subsequently taken up by a new union formed by a large number of co-workmen, if not a majority of them. Since this union was not registered or recognized, the workmen elected five representatives to prosecute the cases of ten dismissed workmen. Thus cases of the dismissed workmen were espoused by the new union, yet unregistered and unrecognized. The Apex Court held that the fact that these disputes were not taken up by a registered or recognized union does not mean that they were not "industrial dispute".

15. It is not expedient that same union should remain incharge of that dispute till its adjudication. The dispute may be espoused by the workmen of an establishment, through a particular union for making such a dispute an "industrial dispute", while the workman may be represented before the Tribunal for the purpose of section 36 of the Act by a member of executive or office bearer of altogether another union. The crux of the matter is that the dispute should be a dispute between the employer and his workmen. It is not necessary that the dispute must be espoused or conducted only by a registered trade union. Even if a trade union cases to be registered trade union during the continuance of the adjudication proceedings that would not affect the maintainability of the order of reference. Law to this effect was laid by the High Court of Orissa in *Gammon India Limited* [1974 (II) LLJ 34]. For ascertaining as to whether an individual dispute has acquired character of an individual dispute, the test is whether on the date of the reference the dispute was taken up as supported by the union of the workmen of the employer against whom the dispute is raised by the individual workman or by an appreciable number of the workman. In other words, the validity of the reference of an industrial dispute must be judged on the facts as they stood on the date of the reference and not necessarily on the date when the cause occurs. Reference can be made to a precedent in *Western India Match Co. Ltd.* [1970 (II) LLJ 256].

16. Here in the case, not even an iota of facts are brought over the record to the effect that the union took up the cause of the claimant as their own. It is also not shown that the members of the union had shown their collective will in favour of the cause of the claimant. Thus it is evident that there is a complete vacuum of facts to the effect that the union espoused the cause of the claimant. Resultantly there is no material to conclude to the effect that the dispute acquired status of an industrial dispute. The reference is liable to be answered against the claimant on that score. Issue is therefore answered in favour of the Corporation and against the claimant.

17. Next count of attack has been made by the Corporation pleading that the dispute was raised by the claimant after five years from the date of superannuation.

A stale claim was put forward, which frustrates relief in his favour. Section 10 (1) of the Act does not prescribe any period of limitation for making reference of the dispute for adjudication. The words 'at any time' used in sub-section (1) of section 10 of Act does not admit of any limitation in making an order of reference. Law of limitation, which might bar any Civil Court from giving remedy in respect of lawful rights, cannot be applied by Industrial Tribunals. However, policy of industrial adjudication is that stale claim should not be generally encouraged or allowed unless there is satisfactory explanation for delay. In *Shalimar Works Ltd.* [1959 (2) LLJ 26], the Apex Court pointed out that though there is no limitation prescribed in making reference of the dispute to Industrial Tribunal, even so, it is only reasonable that disputes should be referred as soon as possible after having arisen and on failure of conciliation proceedings. In *Western India Match Company* [1970 (2) LLJ 256] the Apex Court observed that in exercising its discretion, Government will take into account time which has lapsed between its earlier decision and the date when it decides to consider it in the interest of justice and industrial peace to make the reference for adjudication. Same view was taken in *Mahabir Jute Mills Ltd.* [1975 (2) LLJ 326]. In *Gurmail Singh* [2000 (1) LLJ 1080] Industrial Adjudicator dismissed the reference on the ground that there was delay of 8 years in raising the dispute, which delay was condoned by the Apex Court and it was ordered that the workman would not be entitled to any back wages for the period of 8 years but would be entitled to 50% of wages from the date it raised the dispute till the date of his reinstatement. In *Prahalad Singh* [2000 (2) LLJ 1653], the Apex Court approved the award of the Tribunal in not granting any relief to the workman who preferred the claim after a period of 13 years without any reasonable or justifiable grounds. In *Nedungadi Bank Ltd.* [2002 (2) SCC 4] a lapse of seven years in raising the dispute was held to be a factor to refuse the relief. The Apex Court ruled that the appropriate Government has to exercise its powers of referring the dispute in a reasonable manner. Delay of seven years made the Court to conclude that there was no dispute existing or apprehended when decision was taken to refer it for adjudication. Same view was taken in *Haryana State Co-operative Land Development Bank* [2005 (5) S.C.C. 91]. From above decisions, it can be said that the law relating to delay in raising or reference of dispute is bereft of any principles, which can be easily comprehended by the litigants.

18. Claimant superannuated on 30.04.2007. After his superannuation, he approached the union in the year 2001. The union raised the dispute before the Conciliation Officer, which dispute was contested. It is emerging over the record that for a period more than 4 years, the claimant remained in hibernation. One fine morning, he comes out of slumbers and approached the union for redressal of his grievance. A superannuated employee, if aggrieved by the action of his

employer, is supposed to raise the dispute immediately. Delay in raising the dispute would frustrate claim on continuance in service. Taking into account all these aspects, delay of nearly five years in raising the dispute would certainly come in his way. I am of the considered opinion that on account of delay of nearly 5 years, the claimant is not entitled to any relief.

19. As projected by the Corporation, services of the claimant were regularized with effect from 01.04.1971. He appeared before the medical board for his medical examination. At that time he gave his date of birth as 24.04.1947, which was entered into his service book. Thereafter, he never gave any proof to the effect that the date of birth furnished by him was not correct. After his superannuation on 30.04.2007, he cannot claim his date of birth to be different than 24.04.1947. Date of birth recorded in his service book, which was accepted and acted upon by the parties for more than 36 years, cannot be questioned now. Action of the Corporation in superannuating the claimant on reaching the age of 60 years is found to be justified. Claimant is not entitled to any relief on factual matrix too.

20. In view of the reasons detailed above, it is evident that Shri Ishwar Singh is not entitled to any relief. Furthermore, no facts have been projected to the effect that this Tribunal can invoke its jurisdiction over the matter to adjudicate it, being an individual dispute. In view of these reasons, it is concluded that the action of the Corporation in superannuating the claimant on 30.04.2007 was legal and justified. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Date 09.12.2013

DR. R.K. YADAV, Presiding Officer

नई दिल्ली, 18 दिसम्बर, 2013

का०आ० 130.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार वरिष्ठ अधीक्षक, पोस्ट आफिस, देहरादून के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 43/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18/12/2013 को प्राप्त हुआ था।

[सं० एल-40012/158/2003-आईआर (डीयू)]

पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 18th December, 2013

S.O. 130.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 43/2004) of the Central Government Industrial Tribunal/Labour

Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Senior Superintendent, Post Office, Dehradun and their workman, which was received by the Central Government on 18/12/2013.

[No. L-40012/158/2003-IR(DU)]

P. K. VENUGOPAL, Section Officer

**ANNEXURE
CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL—CUM—LABOUR COURT,
LUCKNOW**

PRESENT : Dr. MANJU NIGAM, Presiding Officer

I.D. No. 43/2004

Ref. No. L-40012/158/2003-IR(DU) dated: 19.04.2004

BETWEEN

Shri Inder Singh, S/o Sh. Bhagwan Singh
Village & Post Office – Mazagoan Kavanu
Distt – Dehradun

AND

The Senior Superintendent
Post Office
Dehradun Division
Dehradun

AWARD

1. By Order No. L-40012/158/2003-IR(DU) dated: 19.04.2004 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Shri Inder Singh, S/o Sh. Bhagwan Singh, Village & Post Office – Mazagoan Kavanu, Distt – Dehradun and the Senior Superintendent, Post Office, Dehradun Division, Dehradun for adjudication to this CGIT-cum-Labour Court, Lucknow.

2. The reference under adjudication is:

“Whether the action of Sr. Supdt. of Post Offices, Dehradun in terminating the services of Sh. Inder Singh S/o Sh. Bhagwan Singh, Shakha Dakpal w.e.f. 22.5.98 is legal and just? If not to what relief the workman is entitled to?”

3. It is admitted case of the parties that the workman, Inder Singh had been appointed as Branch Post Master with the opposite party Post Office w.e.f. 29.07.94 and he was served upon a charge sheet dated 20.03.98 for the misconduct of misappropriation and consequently his services have been terminated w.e.f. 22.05.98 vide impugned order dated 22.05.98.

4. The workman in his statement of claim has stated that he submitted his reply to the charge sheet dated 20.03.98 as per advice of the his higher officer and has alleged that the management arbitrarily terminated his services without following due procedures of law i.e. did not conduct any inquiry or provided him a chance to defend himself, which was flagrant violation of the principles of natural justice. Accordingly, the workman has prayed that the action of the management in terminating his services vide impugned order dated 22.05.98 be set aside and he be reinstated with full back wages; continuity in services and other consequential benefits.

5. The management, denying the allegations of the workman has submitted that the workman received Rs. 20 on 25.6.95 and Rs. 50 on 26.6.95 against R.D. A/Cs and though he entered the amounts in respective pass books; but did not deposit said amount with the department; and thus he had misappropriated the amount, which was submitted back by him on 17.02.98 with interest amount to Rs. 115. The management has further submitted that the above misconduct led to issuance of charge sheet dated 20.03.98, which was accepted by the workman vide his reply dated 11.04.98 and resultantly, he was terminated vide order dated 22.05.98. Moreover, the management has pleaded that the establishment of Post Office is not an industry as envisaged by the various verdicts of the Hon'ble Apex Court. Further, the management has also pleaded that the workman does not come within the definition of workman. Accordingly, the management has prayed that the claim of the workman is liable to be rejected as not maintainable and devoid of merit.

6. The workman has filed its rejoinder; wherein apart from reiterating the averments already made in the statement of claim, the workman has submitted that he had been posted as Branch Post Master and was not allotted any supervisory or managerial work, therefore, he is covered within the meaning of 'workman' as provided in Section 2 's' of the Industrial Disputes Act, 1947.

7. The parties filed documentary evidence in support of their rival contentions. The workman examined himself and one Shri Soorat Singh whereas the management examined Shri G.D. Arya, Assistant Suptd. of Post Offices in support of their claim. The parties availed opportunity to cross-examine the each other's witnesses. The management's witness was cross-examined on 18.2.2011 and with that the management concluded its evidence and accordingly, 26.4.2010 was fixed for argument. Since then the case is being fixed for argument for the reasons that the adjournments were sought by the either parties at one pretext or the other. The workman's authorized representative argued its case on 25.11.2011; but the management refrained to do so. On 20.09.2012 the authorized representative of the management moved an application for rehearing, which was allowed and the case

was fixed for 27.09.2012; but once again the management's representative failed to appear before this court and forward its arguments. Since then the management kept absent on several dates, which resulted into reserving of present file for award, keeping in view reluctance of the management and long pendency of the case since year 2004.

8. Heard the representative of the workman only and perused entire material on record.

9. The authorized representative of the workman has argued that after issuance of the charge sheet for alleged misconduct of misappropriation, it was responsibility of the management to get its charge sheet proved by appointing an Inquiry Officer, who might have inquired into the charges after giving full and adequate opportunity to the workman to defend himself; but the management of the post office failed to observe this norm. It failed to conduct a formal enquiry; wherein the complainants/aggrieved were neither produced nor the workman was given any opportunity to cross examine them. He has further argued that the so called statement/admission of the workman was not recorded by the Inquiry officer; likewise, the other witness whose written statements have been relied upon by the management were neither produced before the Inquiry Officer nor the workman had access to them for their cross examined even then, the Disciplinary Authority, relying on their statement, penalized the workman with the punishment of removal from service.

10. No oral argument has been forwarded by the management. The management has taken plea that the establishment of Post Office does not come within the purview of 'industry' as defined in Section 2 'j' of the Act and the applicant is not a 'workman' within the provisions of Industrial Disputes Act, 1947 as he was Extra Departmental Branch Post Master. It has further pleaded that consequent to admission of the workman vide dated 11.04.98, there was no need of conducting any formal enquiry into the case of the applicant, hence, there is nothing illegal or infirm with the impugned order, removing the workman from service or the appellate order, rejecting appeal of the workman.

11. I have given my thoughtful consideration to the submissions of the authorized representative of the workman, pleadings of the management and entire evidence adduced by the either parties, documentary as well as oral.

12. The case of the workman in nut shell is that the as per settled law of the land and procedure on occurrence of the misconduct and issuance of the charge sheet, it was incumbent upon the management to conduct a formal inquiry by appointing an Inquiry Officer and the workman was required to be given a notice to appear before it and

defend his cause; but the management in haste failed to observe this basic principle of natural justice. It relied upon the written statement of the workman, which was taken by misrepresentation, and statements of the other witnesses, to whom the workman had no opportunity to get them cross examined. This was not only deviation from the procedure of law regarding conducting an inquiry into the misconduct but also denial of proper defence to the workman. The management passed the impugned order dated 22.05.98 without observing above mandatory formalities. Moreover, the workman has challenged the validity of impugned order on the ground that no complaint was ever made by any one and also that no such complainant was ever produced before an independent Inquiry Officer for recording its evidence/statement or his cross-examination by the workman. However, the pleadings of the workman are well supported by one of the depositor viz. Shri Soorat Singh.

13. Per contra, the case of the management rests on the plea that it is not an industry and the applicant is not a workman with the Act; and further that in view of the admission of the workman regarding alleged misconduct, there was no need to conduct a formal enquiry.

14. Hon'ble Apex Court in *Bangalore Water Supply & Sewerage Board vs. A Rajappa & others* (1978) 2 SCC 213 case has observed that

“absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.”

Hon'ble Apex Court has further observed that

“Where (i) systematic activity (ii) organized by co-operation between employer and employee (the direct and substantial element is commercial (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making on a large scale Prasad or food) prima facie, there is an industry in that enterprise.”

The workman has relied upon *General Manager, Telecom vs. S. Srinivasa Rao & others* 1998 LLR 8; wherein it has been held by Hon'ble Apex Court that the Telecommunication Department is an 'industry within the definition of Section 2(j) of the Industrial Disputes Act, 1947 because it is engaged in a commercial activity and is not discharging any of the sovereign functions of the State.

It is well known that the Department of Post is indulged in transporting letters, money orders, parcels etc. from one place to another within the country and overseas also and for this they charge fee in form of postage stamp or in cash. Thus, the safe movement of articles

from one place to another could be done only when it is systematic and there exists proper management/co-operation between the employer and employee of the department concerned. Further, the services provided by the postal department is very much to satisfy the human wants. Moreover, the activity run by the postal department is no 'sovereign' in the nature as similar services are being provided by other various courier companies.

Thus, in view of facts and circumstances of the case and above legal propositions, I am of considered opinion that the opposite party management i.e. post office is at par with the other courier companies, indulge in commercial activity and not engaged in any sovereign function of the State; and accordingly, come to the conclusion that the opposite party is an 'industry' within the provisions of Section 2 (j) of the Industrial Disputes Act, 1947.

15. As regarding the plea of the management that the applicant is not a 'workman' within the provisions of the Act, the applicant, Inder Singh has pleaded that he had been posted as Branch Post Master and was not allotted any supervisory or managerial work, therefore, he is covered within the meaning of 'workman' as provided in Section 2 's' of the Industrial Disputes Act, 1947; and in rebuttal the management has taken plea that the applicant served the department under the category of Postal Department E.D. and for him the E.D. (Services Conduct) Rules, 1964 are applicable; but it failed to sustain its contention by filing relevant Rules/guidelines. Thus, there is no material on record to corroborate that the applicant was covered with different Rules and his case is not covered within the provisions of I.D. Act or that he is not a workman within I.D. Act. Hence, I am of opinion that the applicant is a 'workman', covered within definition of Section 2 (s) of the Act.

16. Now coming to the merit of the case, the main contention of the workman is that he had been removed by the impugned order dated 22.05.98 after serving a charge sheet for alleged misconduct of misappropriation, without conducting any formal inquiry. The workman's case is that since there was no complaint from any corner. The management relied upon the written statement of some independent witness to whom he had no chance to cross-examine. Since the management failed to observe this general principle of natural justice and not afforded him proper opportunity to defend himself, the impugned order is bad in the eye of law. As regard his admission dated 11.04.98, the workman has come up with the case that the same was obtained by the management through misrepresentation/pressure. The management has defended its move with the sole contention that consequent to admission of the workman vide dated 11.04.98, there was no need to go into inquiry etc.

17. It is settled law as well as undisputed procedure that once a charge sheet has been issued and even there

comes admission from the side of charged official, even then the same has to be recorded before Inquiry Officer had it been recorded by an independent Inquiry Officer then the Inquiry Officer might have warned him of the pros and cons of the such 'admission' which the Inquiry Officer was supposed to do. Moreover, when the charge sheet is out come of some complaint, as in the present case it was written statement of some witnesses, then those complainants are ought to be produced before an independent Inquiry Officer, for recording their statement and the workman had an chance to cross-examine them. Further, in absence of any formal inquiry i.e. an inquiry into the charges by an independent Inquiry Officer who affords all reasonable opportunity to the workman to defend himself with full access to peruse the documents relied upon by the management and proper opportunity to cross examine the witness whose statement were relied upon, it cannot be said that the management's move was just. The workman has relied upon *A. Karthikeyan vs. Managing Director, TASMAC Ltd. Chennai & others 2010 LLR 663*; wherein the services of the petitioner had been terminated without enquiry. Hon'ble High Court setting aside the impugned order, held it 'not valid', even if the petitioner has confessed under pressure and has observed that such statement cannot be basis for termination.

18. Admittedly, in the instant case, the charge sheet was issued and an admission vide letter dated 11.04.98 was obtained from the workman and thereafter, relying on said admission and written statements of the few other witnesses the impugned order was passed. An admission itself cannot be said to be a sufficient basis to prove the charge sheet, particularly when it was not recoded by an independent authority who might have explained him of adverse effects of such admission. The workman could not get an opportunity to cross-examine examine those persons viz. Shri Soorat Singh and Smt. Sundla Devi, who filed complaint/statement regarding misappropriation/ misconduct by the workman since no inquiry was ever

conducted against the workman. The workman was penalized/terminated without being getting any opportunity to defend himself. The Disciplinary Authority while passing the impugned order dated 22.5.98 moved only by the statement of Shri Soorat Singh and Smt. Sundla Devi without considering the fact that they have not been cross-examined and as such acted in complete defiance of principle of natural justice. It is the fundamental rule of law that while punishing a person at least an opportunity of hearing must be given to him; but in the instant case this basic rule was not observed by the management of Post Office and the workman was not given an opportunity of personal hearing before terminating his services.

19. Thus, in view of the discussions made above and facts and circumstances of the case, I am of the opinion that the action of the management of Sr. Supdt. of Post Offices, Dehradun in terminating the services of the workman, Inder Singh without conducting a formal inquiry and providing adequate opportunity to the workman to defend himself was illegal and unjustified.

20. As regard relief which may be extended to the workman, the workman has relied on *Zila Sahakari Kendriya Bhank Mariyadit vs. Jadishchandra 2001 LLR 310*; where in a case a working after issuance of charge sheet for alleged misconduct of embezzlement returned the money and his termination was set aside on technical grounds that no enquiry was conducted, Hon'ble Apex Court upheld the reinstatement; but set aside the order for back wages.

Accordingly, keeping in view, the above legal position, the workman shall be reinstated with consequential benefits i.e. continuity etc. less any back wages.

21. Award as above.

Lucknow
16th April, 2013.

Dr. MANJU NIGAM, Presiding Officer